

# Admissibility of Handwriting Expertise

## A Survey of Post-*Daubert* Cases

Formerly: Appendix B  
“Texas *du Pont* / *Daubert*...”  
Third Edition, Revised and Enlarged  
2012-2013

By Marcel B. Matley

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A & M Matley, San Francisco, CA  
First edition published May 2007  
Revised and Enlarged, 2012-2013

Admissibility of Handwriting Expertise:  
A Survey of Post-*Daubert* Cases.  
Third Edition, Revised and Enlarged,  
2012-2013.  
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#### DEDICATION

This text is dedicated to the handwriting experts named herein whom courts of law have found to be reliable and credible because of their conscientious attention to proper theory and method, their accuracy in observation, and their candid and clear exposition of the facts.

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## INTRODUCTION

This text is intended for both attorneys and document examiners. It surveys post-*Daubert* cases on admissibility of expert handwriting evidence. Because *Daubert* came down in 1993, I chose cases from that year and later. *Daubert v Merrell Dow Pharmaceuticals, Inc.*, *Schuller v Merrell Dow Pharmaceuticals, Inc.*, 727 Fed.Sup. 570 (S. D. Cal. 1989); affirmed, 951 F.2d 1128 (9 Cir 1991); vacated and remanded, 125 L.Ed.2d 469, 113 S.Ct. 2786 (1993); affirmed, 43 Fed.3d 1311 (9 Cir 1995); cert. denied, -- US --, 116 S.Ct. 189, 133 L.Ed.2d 126 (1995). Occasionally earlier cases are discussed because of especially pertinent issues they consider.

Cases from states on the *Frye* standard, *Frye v United States*, 54 App. DC 46, 293 Fed. 1013, 34 A.L.R. 145 (1923), are also included because they might have elements which can cross-apply to the *Daubert* standard. Selected cases on stylistics or linguistics and fingerprint identification are included when they mention or are cited relative to handwriting expertise. The case descriptions are as objective as I can make them; commentaries are my evaluations of the cases relative to both legal and technical reliability, as well as to draw salutary lessons from the cases. For the most part, issues other than handwriting expertise are ignored however important they are legally or technically. On occasion commentaries are unabashedly polemical in order fully to answer opposing polemics. To summarize: Case synopses aim for accuracy and objectivity as in the ideal of journalism, while commentaries are my editorial evaluations and opinions. Before relying on any particular citation in your case work, check the original text of the case report for yourself.

Many case reports are officially designated “not for publication,” and rules of court forbid or restrict their citation as precedents. If for a particular case a citation to a standard reporter, such as *Federal Reporter* or *Pacific Reporter*, is not given, the case most probably comes under such a restriction. However, the reader must take responsibility to ascertain the authoritative nature of any case cited in support of a legal position. I only intend to supply as thorough a survey of available and relevant cases as I can, given my limited time and resources. Decisions may also have been overruled or modified by the same or higher court, and the user is responsible for verifying whether this is so or not.

Cases that are not officially published, and thus not to be cited as legal precedents, are included. I consider them as documentation of historical facts. As any other documentation of historical fact they serve to prove the reality they report, namely that forensic handwriting expertise is considered scientifically, technically and legally reliable, thus meriting admission in courts of law. This reality, however overwhelming and unarguable it is, is still denied by those who regard their own stunningly awesome opinions far above mere reality.

An example of the rules regarding unpublished case reports is the following which is discussed among cases for Michigan Courts of Appeal:

*People of the State of Michigan, Plaintiff-Appellee, v Andre Lamont Franklin, Defendant-Appellant.* No. 300371. January 19, 2012. Court of Appeals of Michigan.  
Before: JANSEN, P.J., and WILDER and K. F. KELLY, JJ.  
UNPUBLISHED  
PER CURIAM.

There are a great number of cases post-*Daubert* wherein expert handwriting evidence was received, but the case report gives no specific mention of a challenge to, or a ruling on, reliability. I have included such cases because I consider them supportive of reliability for two reasons. One, the trial court by law must make some determination of reliability before admitting the proffered expert testimony, and the inference I make is that there was such a judicial finding. Two, I infer from the very routine nature in which the expert evidence is reported that such is indicative that all parties at trial and/or upon appeal considered the expert evidence technically and legally reliable, and that the trial and appeal courts did so as well, unless there is statement to the contrary. I suggest that one can reasonably consider these cases of routine admissibility as supportive of the general finding by courts of law that expert handwriting evidence is in itself reliable. The comment for this kind of case will be that it is “a case of routine admissibility.”

Much of my earlier research has been done on *www.LexisOne.com* because of the great time and expense involved in going to the law libraries. The case reports are not in standard format but in LexisNexis’s own format. The content is treated by me as if faithful to the original. If one is to use the case for legal citation and quotation, rules may require an official reporter be cited and its official format used for copies submitted to a court of law. One must check rules of court that apply to the jurisdiction one is working in.

In early 2012, LexisOne stopped providing free access to court case reports. I subsequently turned to legal search services of Google Advanced Scholar: [www.scholar.google.com/advanced\\_scholar\\_search](http://www.scholar.google.com/advanced_scholar_search). I found it to be more congenial for me than other Internet sources.

At times the association of an expert witness is indicated, either employment or membership in an organization. Please bear in mind that these refer to any period of time during the expert’s career, since often it is very difficult or impossible to verify current memberships and employment or the same at a specific point in time. I wish I had access to dependable information regarding such association so that all may be given the acknowledgment due them. The most complete information is for my own organization, National Association of Document Examiners [NADE], because of personal knowledge and ease of access to publicly available records maintained by NADE on its web site. I sincerely wish I could do the same justice to all organizations and experts, and the reader’s feed-back would surely assist me in satisfying this desirable and just recognition.

The cases are arranged according to the outline in the Table of Contents. Within each segment of the outline, cases are arranged by year and alphabetically by plaintiff within the year, using last names for individuals or an appropriate key word for others. Thus for the *Estate of Acuff* the key word is decedent’s last name, “Acuff.” The year used is the year of the last decision regarding an issue in handwriting expertise as best as I could determine. Otherwise, the date of a decision that merely lets previous decisions stand is ignored, such as “*certiorari* denied,” or that addresses other issues. If you find any mistake in spelling or citation, or any other type of mistake, please be so kind as to inform me so that future editions can make the correction. Likewise, if you know of a case that could be included but is not, please supply the citation and all necessary information on accessing the case.

Here are names and initialisms of some organizations mentioned herein:  
AAFS: American Academy of Forensic Sciences

ABFDE: American Board of Forensic Document Examiners  
ABFE: American Board of Forensic Examiners  
AFDE: Association of Forensic Document Examiners  
ASFDE: American Society of Forensic Document Examiners  
ASQDE: American Society of Questioned Document Examiners  
BFDE: Board of Forensic Document Examiners  
IAQDE: Independent Association of Questioned Document Examiners  
NADE: National Association of Document Examiners  
SWAFDE: Southwestern Association of Forensic Document Examiners  
WADE: World Association of Document Examiners

IAQDE and WADE are both defunct. My understanding is that ASFDE and ASQDE are one and the same organization.

I am a member of NADE, which is why I could identify its members more completely. No slight is intended to any other organization. If in the future I have the time to do it, new editions will give the recognition due them all for the many fine handwriting experts who belong to them. Courts of law have made derogatory remarks of very few handwriting experts mentioned herein, very few indeed. I know that most of the latter, and I suspect that all of them, are those who do not belong to any of the organizations listed above or, if they do, fail to participate actively. The one exception I would personally make is ABFE, one of a dozen or more names the organization sports. I belonged in its year of founding and quit after its first 1993 conference due to serious ethical concerns I had. Subsequently, I received several invitations to enjoy certification in some forensic field I had neither interest nor qualification in solely for the bother of sending in a check. I keep all such offers on file in case anyone takes exception to this or similar remarks.

The 2006 edition of this text had 135 pages and 335 cases cited. 305 case citations were added for the second edition, and all text was reviewed for correction if needed. This edition cites 917 cases. I am confident that with more time to research, the entire coverage would easily double in size. The vast majority of trial court cases are not reported, and some of those listed come from reports in the literature with no information as to how one can obtain a transcript or official report. The reader is invited to submit information on cases at the trial level, particularly those involving *in limine* challenges to either the document examiner or the critic of handwriting expertise.

I refer to such critics as “anti-expert experts” since they have no forensic expertise but they do possess some ethereal genius that lets them decide whether genuine forensic experts possess expertise. They do have a genius for persuading others that the law and other pertinent realities are not what they are. I have the unfortunate duty to consider these anti-expert experts quite often in this text. If you believe I am a bit too sarcastic in discussing their remarkable skills, some of my friends have voiced the same view. If, after viewing their testimonies summarized herein, you feel this sarcasm should be toned down, I would appreciate your comments. If you feel I restrained myself too much in this regard, I would appreciate your comments even more.

To repeat my self-protective assertion: The reader takes all responsibility for verifying any information given herein for accuracy and applicability before relying on it. However industrious and conscientious I was in gathering this information, and I was both to the best of my ability, I remain another human being and subject to human error.

A second self-protective assertion: In case names and case citations I often follow exactly the usage of the particular report I found. If I thought there seemed to be a standard that prevailed most often, I have edited the usage of the particular report I found. At times, I later unearthed the case in an official reporter and so edited my usage to fit that in the official reporter. All in all, be kindly in your assessment of my usage of case names and citations, while I reiterate my self-absolution from all responsibility and assert again the burden that you, good reader, have in verifying any and every thing in this work that you think might be of use to you. The Latin proverb, “Caveat emptor,” is hereby altered to say, “Caveat lector!” After all, you may have paid no cash to obtain this edition of this work, so I have to extort some price of you.

Blessed Henry Cardinal Newman wrote *Apologia pro Vita Sua*. If I were to write an *Apologia pro Scriptura Sua*, I would begin with the roughness of the spelling and manner of citation used herein. I would give two excuses, neither of which excuses one from verifying such matters before submitting them to the reader. First, the sources used had even greater variation, often within the same source or even the same item. Second, as the text and I both grew older and went through different editions, I grew tired in physical stamina, as well as in being devotedly interested, of checking some precious pedantries or treasured trivia. My librarian’s conscience pesters me regarding the neglect, but my lack of passion regarding tiny details triumphs. I have gathered these gems from their various sources and leave it to you, good reader, to perfect and polish them in accordance with your standards and usage.

If by now the reader suspects this introduction grew as much like Topsy as much as having been planned, the reader is perspicacious. After a final review of the entire text with some corrections and additions, I owe the reader explanation, if not apology, for further imposing on another’s valuable time.

Some cases provided occasion to address issues in document examination that are often misunderstood, the misunderstanding serving to reject very reliable evidence at some times and accept very unreliable evidence at other times. I took the occasion every now and again to expand my editorial comments to address some of these matters.

To this I must add a slight correction. The phrase “routine case of admissibility” has been edited out many times, mostly because it distracts from an editorial comment. The reader’s perspicacity in discerning the random manner of growth for this introduction will serve to alert the reader to cases that, as far as can be discerned from the case reports, to be cases of routine admissibility. The inference I made still holds: The law requires a finding of reliability by the trial judge prior to expert testimony and I assume the trial judge performed all required tasks unless there is indication otherwise.

And now, good reader, you may safely turn the page with assurance you will not encounter further introductory remarks.

## I. FEDERAL CASES.

### A. FEDERAL TRIAL COURTS: U.S. DISTRICT COURTS.

1993

1. *Lavean v Cowels*, 835 F. Supp. 375 (US Dist. Ct. WD MI 1993)

Plaintiff claimed a signature on a deed was a forgery, but his document examiner, Leonard Speckin, testified that it was genuine. To support his claim of fraud, plaintiff presented Speckin's testimony that two signatures were impressed on the deed, meaning they had been written on another document while it was placed on top of the deed. However, that only proved at some unspecified time an unknown document was signed on top of the deed.

COMMENTARY: A case of routine admissibility with the added acceptance of expert identification of indented signatures.

2. *Scott Doe v Kohn, et al.*, (Fed Dist Ct Philadelphia 1993)

Defense expert Gus Lesnevech was barred from testifying that a tear in paper indicated erasure with overwriting for lack of any technical basis. In the same case he was barred from identifying the person making scratch-outs over a signature. He did not have exemplars of scratch-outs by the person, while the signature was a different thing from scratch-outs so the two could not be reliably compared for purposes of identification.

COMMENTARY: Mr. Lesnevech was certified by American Board of Forensic Document Examiners as one of the original grandfathered members. Plaintiff counsel employed two document examiners to advise on the technical underpinnings for the challenges to Lesnevech, one of whom, Robert J. Phillips, also served as trial expert. The anti-expert experts were incapable of having Mr. Lesnevech's entire testimony on one issue found unreliable in *Starzecpyzel*, while in *Scot Doe* his proffered testimony was found entirely unreliable on two issues.

3. *Greenberg Gallery, Inc., v Bauman*, 817 FS 167 (D.C. DC 1993); affirmed without opinion, 36 F.3d 127 (DC Cir 1994)

Headnote 1: "It can be judicially noted that handwriting, like fingerprints, is subject to established objective tests, expert opinions about which are admissible."

Plaintiff's expert looked at a purported Calder mobile for ten, then later for two, minutes, maybe other short period, and was positive of forgery. It was exact copy of mobile in archival photo, but Calder never made an exact copy, therefore it was a forgery, and therefore original existed somewhere else in the world, and therefore this was a forgery. He never examined the signature. Defendant's expert examined the mobile for one and half hours. She examined the signature and said it was absolutely accurate. She also checked provenance, which began with plaintiff's expert back when it was first sold.

COMMENTARY: This case illustrates that the expertise of handwriting identification is used in other fields than forensics. Art experts routinely engage in signature verification when

authenticating art works. This was a post-*Daubert* decision, and it illustrates that applying it and the Federal Rules did not involve the peculiar legal theory invented by the anti-expert experts.

Experts in art examination qualified as handwriting experts since the same skill is routinely employed in their work. The critics of handwriting expertise, claiming to be competent scholars and researchers of the pertinent literature, particularly law since they are mostly law professors, miserably fail in uncovering such documentation as this case report that conclusively proves one of their favored doctrines is entirely mistaken.

4. *U.S. v Edwards*, 816 F. Supp. 272, 1993 U.S. Dist. LEXIS 3091 (D DE 1993)

In conviction for “unauthorized use of access device, a credit card, to obtain travelers checks,” the “testimony of government’s handwriting expert was properly admitted.” Georgia Carter had compared defendant’s known exemplars to the fictitious signature and concluded he had written it. The Court cites *U.S. v McGlory*, 968 F2 309 (3 Cir), cert. den., - US -, 113 S.Ct. 627, 121 LEd2 559 (1992), that a qualified opinion goes to the weight of the expert handwriting evidence and could be tested by cross-examination. Defense counsel fully cross-examined Carter and “fully availed himself of the opportunity during closing argument to discredit her expert testimony for its alleged lack of certainty.”

At page 277, proper jury instructions were given that the jury could reject any or all of the expert testimony.

COMMENTARY: One suspects that those, who insist expert handwriting evidence must, as a requirement of science and as a rule of law, be kept out of jury trials, know very well that they cannot, as in *Edwards*, prevail on the merits and on the facts. I cannot recall a case report that says Saks and his like prevailed with a jury, those wonderfully common-sense and reasonable twelve folks who are us. They, however, claim to have done so but minus specific case citations in any writings I have seen of theirs, other than cases discussed herein. For an example of the claim minus evidence for it, see Reni Gertner, “Criminal Defense Lawyers Mount New Attacks on Forensic Evidence,” *Lawyers Weekly Archive*, Dec. 11, 2000.

5. *U.S. v El-Jassem*, 819 F. Supp. 166 (US Dist. Ct. ED NY 1993)

Retired FBI agent Fred Woodcock, a document examiner with more than thirty years of experience, testified without contradiction that all the handwriting samples in question were written by the same person.

COMMENTARY: A case of routine admissibility.

1994

6. *U.S. v Smyth*, 863 FS 1137 (N.D. CA 1994)

COMMENTARY: It is fully titled: “In the Matter of the Requested Extradition of James Joseph Smyth.” British Government’s request regarding an alleged IRA member was denied on grounds of likely religious and political retaliation. The case is cited as considering expert handwriting evidence, but I could find no such reference in the report.

///////



7. *Zambia National Commercial Bank Ltd. v Fidelity International Bank*, 855 Fed.Supp. 1377 (US Dist. Ct. S.D. N.Y. 1994)

Carl Schaffenberger, a handwriting expert, testified for defendant “that he required several hours to confirm 1385\*1385 that the signatures were forgeries.” Therefore, defendant bank acted reasonably in taking the forged for genuine. In the end FIB had to pay for one check, and Zambia National had to absorb the other.

COMMENTARY: Schaffenberger is a certified member of NADE.

1995

8. *U.S. v Gale*, 1995 U.S. Dist LEXIS 3394 (N.D. IL 1995)

IRS sought order for handwriting exemplars from two respondents who asserted the exemplars were for criminal purposes and not tax investigations and IRS already had exemplars from one of them. They also asserted that Brenda Acevedo, the handwriting expert, would not qualify to testify at court under *Daubert* standards. The Court ruled that “the government’s burden is a ‘slight’ one” to show need for the exemplars, while Respondents had “a significantly greater” burden to defeat the request. They had not met their burden while the Government had met its burden.

COMMENTARY: The *Daubert* argument was irrelevant to the issue of ordering exemplars, since the burden was slight and the handwriting expert qualified “to attest to the fact that the materials presently in the government’s possession are insufficient.” It is poor military tactics to fire an artillery barrage either before or after the time that it would effectively change fortunes in battle.

9. *U.S. v McVeigh*, 896 F. Supp. 1549 (W.D. OK 1995)

This deals solely with court order to comply with grand jury subpoena for handwriting exemplars. On advice of counsel, defendant refused to comply with subpoena and later with court order. Nine reasons for the refusal are given at page 1552, and each is replied to by the Court:

1) *Subpoena product of illegal electronic surveillance*. At page 1559: “The witness/Defendant has failed to raise a substantial factual issues [sic] as to the existence of illegal electronic surveillance as the source of the subpoena and directive.” Besides, FBI affidavits said there was none.

2) *Breaches of grand jury secrecy*. At page 1560: “To date, the witness/Defendant has not made even a *prima facie* showing that grand jury secrecy violations have occurred.” [Emphasis in original.] Besides, the remedy sought is not the appropriate one if such violation had occurred.

3) *Exemplars sought for another matter*. See replies to similar arguments.

4) *Unreasonable search and seizure*. At page 1560: He claimed printed handwriting was what he regularly used, so cursive writing would be unreasonable search and seizure due to the mental effort it required. However, checks and other documents were produced on which he had used cursive writing. The constitutional protection does not hinge on a handwriting being constantly exposed to the public, but on whether the person has a legitimate expectation to privacy. So one hardly ever speaking in public still has no privacy expectation relative to the voice.

5) *Overly broad*. At page 1558: The exemplars are required to determine authorship of relevant documents, the forms to be used are similar to those routinely used, and the court examined the three exemplars requested.

6) *Improperly issued*. At page 1558: The composition of the grand jury was challenged, but a witness before a court or grand jury is not entitled to challenge its authority, and besides the proper procedure for constituting the jury was followed. "And finally, even absent a valid grand jury subpoena and directive, the Court has independent authority to order the handwriting exemplars under the All Writs Act."

7) *Improper purpose of obtaining evidence for a criminal case* (rather than determine probable cause). At page 1557: Defendant has burden of proving that there is no reasonable possibility that the exemplars will produce relevant information. He did not. As to probable cause argument, the Government has no obligation to indict at point of probable cause rather than waiting for stronger evidence.

8) *Same writings will be used for trial "here" and in Michigan*. At pages 1557-8: "Such rank speculation or supposition is insufficient to overcome the presumption of regularity that attaches to the grand jury's acts [citation omitted], or to raise a substantial factual issue as to the purpose for which the subpoena and directive were issued."

9) *As drawn, the order makes Defendant a witness against himself*. At page 1561: "[B]ut the thought processes involved [in producing cursive writing versus printed] are not revealed, only the products thereof...." Pat Tull was defense expert supporting argument of mental exposure. At page 1562: "The exemplars are nontestimonial because they do not reflect any communication by the witness of his beliefs, knowledge of facts or assertions of fact."

At page 1562, it intimates in a way that he won by losing: Civil contempt would be futile and criminal contempt too costly, besides he was already in jail and had no money to pay any fines. It was a trial issue that there was no basis in science for expert handwriting opinions.

COMMENTARY: At trial expert handwriting opinions were barred, thus seemingly to nullify Congressional authority to establish statutes on a court's authority to order handwriting exemplars. It seems that Federal courts do not give thought to the Texas rule that the Legislature satisfied itself on the reliability of a technique when it made it admissible by statute. Surely Congress would have been satisfied that expert handwriting examination was reliable when the various laws supporting its introduction at trial were enacted.

#### 10. *U.S. v Starzecpyzel*, 93 Cr 553 (LMM), 880 FS 1027 (S Dist NY 1995)

Apparently this is the first and most famous *in limine* hearing under *Daubert* on whether handwriting expert identification is scientifically reliable and admissible. Gus Lesnevich was handwriting expert for prosecution at trial and Mary Wenderoth-Kelly, certification official of American Board of Forensic Document Examiners (ABFDE), testified for the Government in the *Daubert* hearing. Defense presented as experts George Edward Stelmach, some kind of sports researcher, and Michael J. Saks, law professor.

"The court might well have concluded that a forensic document examination constitutes precisely the sort of junk science that *Daubert* addressed." But it is acquired "over a period of years" and comes "under the 'technical, or other specialized knowledge' branch of Rule 702...." Court rejected the nine-scale opinion terminology as being too exact.

COMMENTS: Mr. Lesnevich was certified by ABFDE as was also Mary Wenderoth-Kelly, the Government's expert for the *in limine* hearing.

The transcript of the *Daubert* hearing is a circus of assumption, speculation, egoism, illogical thinking, ignorance of QDE literature, and heavens knows what else. The transcript of this trial expert's testimony screams for impeachment on several points. But being nescient of the discipline and incompetent in observing and evaluating handwriting, the defense "experts," singly and in combination, could not keep him out. By contrast, a lone handwriting examiner in New Jersey had him disqualified twice in the same case from giving opinions which violated the technical methods in the field. See: Robert J. Phillips, "A case report. {Scott Doe, et al., v Kohn, Nast & Graff}" 17 *Journal of National Association of Document Examiners* 28-33 (Spring 1995).

As to the nine-point scale, when properly considered as a five-point scale it exactly parallels the court's own terms for certainty of legal opinions, which proponents should have pointed out. Other cases reviewed herein will confirm this.

## 1996

### 11. *Bohler-Uddeholm v Elwood Group*, (W.D. Penn. #910706, 1996)

*Scientific Sleuthing Review*, Spring 1996, page 1, reported that the testimony for plaintiff by Albert Lyter and Richard Brunelle was dismissed without cross-examination. Defense was seeking sanction against plaintiff's attorneys and experts.

COMMENTARY: Al Lyter also had his testimony suppressed in *Learning Curve Toys, L.P., v PlayWood Toys, Inc.* It seems that Richard Brunelle and he often offered opposing opinions in cases, much of it denouncing the reliability of the other's work. Both have been members of American Academy of Forensic Sciences.

### 12. *Nielsen, et al., v Village of Lake in the Hills, et al.*, 948 F. Supp. 786 (US Dist. Ct. ND IL 1996)

"Nielsens' final challenge to the existence of probable cause is an attack on the authenticity of Joseph's signature on his written statement to Wright (J. Callahan Aff. I ¶¶ 14, Ex.). They present the testimony of 'questioned document examiner' Darlene Hennessy ('Hennessy'), who concludes 'based on a reasonable degree of scientific certainty' that the signature on Joseph's May 5 statement to the Village Police Department was not written by the same person who signed Joseph's August 25, 1995 affidavit.[7] As defendants have pointed out, the reliability of Hennessy's conclusion is suspect in her own terms,[8] let alone under a Daubert-type analysis. Nonetheless it will be taken as true for purposes of the current motion."

There were other communications of the same import as Joseph's, so the claimed inauthenticity of Joseph's signature made no difference. All defendants were granted summary judgment.

COMMENTARY: The wording above suggests that there would have been a successful *in limine* challenge to the expert testimony if the matter had proceeded to trial on the merits.

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13. *U.S. v Goldberg*, 937 F. Supp. 1121 (US Dist. Court, MD PA 1996)

“At the re-trial, the government presented evidence in the form of the testimony of David W. Attenberger, Supervisory Special Agent for the Federal Bureau of Investigation. Attenberger is a document examiner who works in the FBI crime laboratory in Washington, D.C. It was Attenberger’s opinion that Magistrate Judge Sorrentino’s signature was copied from an original order in the civil case. In essence, the process would involve typing the fake order, placing a cut-out copy of the signature in the appropriate spot, and making another photocopy. 1125\*1125 Attenberger concluded that the two signatures, that on the fake order and that on an actual order from the civil file, were so closely alike that it was highly improbable that the false signature was written by hand on the fake order.

“To rebut this testimony, Goldberg presented the testimony of Duane Munera, an inmate who was incarcerated at USP-Lewisburg during the appropriate time. On the stand, Munera made a free-hand copy of the signature of Magistrate Judge Sorrentino which credibly reproduced the signature. In response to a suggestion by the prosecutor that he had practiced signing the name, Munera copied the signature of a court security officer.”

COMMENTARY: Munera’s demonstration of his versatile skill had no bearing on the outcome. Charles Hardless, Jr., tells in *The Identification of Handwriting and the Detection of Forgery*, Calcutta India, 1912, of a case in which a young man was accused of forgery. Waiting for the prosecution expert to arrive, the young man confessed and proceeded to make excellent imitations of the judge’s and attorneys’ signatures. When the expert arrived, he was sworn in and asked to compare the young man’s imitated signatures to the genuine signatures, without telling him what had happened before he arrived. He authenticated every imitation as genuine.

14. *U.S. v Pravato*, 95 CR 981 (E.D. NY 1996) [ABFDE Resource Kit]

Motion to exclude handwriting expert testimony was denied. *Daubert* did not apply to the evidence, accepting the *Starzecpyzel* analysis in this regard. The jury would be assisted and could evaluate the evidence, while defense would “present its own expert who will testify to the vagaries of handwriting analysis,” and the Court would give a fitting instruction.

COMMENTARY: The ruling was standard judicial common sense which essentially made the parties litigate the issues of fact before a jury. The interpretation of *Daubert* was proved incorrect by the decision in *Kumho Tire Co., Ltd., et al. v Carmichael et al.*, No. 97-1709, 526 US —, 143 L.Ed.2d 238, 119 S.Ct. 1167 (1999), reversing *Carmichael v Samyang Tire, Inc.*, 131 Fed.3d 1433.

1997

15. *U.S. v Evans*, M.D. FL Feb. 1997, though may be W.D. PA May 1997

In a 2006 AAFS presentation, Robert J. Muehlberger cited this as a handwriting *Daubert* case.

16. *U.S. v Humphery*, No. 94-CR-447-JEC (N.D. Ga. 1997)

A source said this was one of Professor Mark Denbeaux’s cases, but I have not been able to locate a text.

17. *U.S. v Martin*, No. 1:96-CR-287-JEC (N.D. Ga. Jan. 22, 1997)

Robert Muehlberger testified in *Daubert* hearing to 1200 experts testifying in questioned documents.

Footnote 305, *29 Seton Hall Law Review*, page 484, says Meuhlberger credits Saudek more than Osborn and that the latter based his work on the former. In an AAFS 2006 presentation Robert J. Muehlberger said Kam and Denbeaux appeared in this case.

COMMENTARY: To my best recollection, everything Meuhlberger has written is well worth study.

18. *U.S. v McVeigh*, 96-CR-68, U.S. D.C., Colorado, Feb. 5, 1997; 83 *ABA Journal*, 76-78 (May 1997)

The *ABA Journal* article reported that the judge ruled similarities in handwriting could be testified to by an FBI expert but an identification of the writer might not be made. A transcript available on the Internet recorded testimony by McVeigh's sister, Jennifer, wherein she identified his handwriting on letters of hatred and vengeance.

COMMENTARY: Copy of the defendant's "Motions to exclude handwriting and hair and fiber identification evidence" with attached memoranda from *Starzecpyzel* can be downloaded from the Internet.

See above among 1995 District Court cases the discussion of the pre-trial court order for McVeigh to give handwriting exemplars.

## 1999

19. *U.S. v Hines*, 55 F. Supp. 2d 62 (D. MA 1999)

After a *Daubert/Kumho* hearing, it was ruled that the handwriting expert may testify to similarities between the questioned writing and defendant's but not identify defendant as writer. Denbeaux was for defense, Kam for Government, and Harrison was trial expert. Denbeaux and Kam were not called at trial because of restriction placed on Ms. Harrison.

At page 65 there is a nice discussion of the difference between scientific consensus and jury finding.

Quoting Denbeaux, the Court observes that Harrison's results might be different if given several samples of people writing similarly to Hines.

COMMENTARY: The last sentence above illustrates how the anti-expert experts employ speculative ruminations and offer them as scientific evidence. Yet opposing attorneys do not seem to know the rule against speculative expert opinions. A finding of fact based on speculative "scientific" evidence, which is inherently unreliable both by scientific method and by case law, is itself unreliable and thus an injustice to the party against whom the finding of fact is made.

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20. *Aptix Corp. et al. v Quickturn Design Systems, Inc.*, 2000 US Dist LEXIS 8408, District Court Decision (ND CA 2000); affirmed in part, vacated in part, 269 Fed.3d 1369, 2001 U.S. App. LEXIS 24047, 60 U.S.P.Q.2d 1705 (US Ap Fed Cir 2001); rehearing denied, 2001 U.S. App. LEXIS 27844 (US Ap Fed Cir 2001)

Using a copy of one fabricated notebook, a Dr. Mohsen handwrote a fabricated second, leaving impressions on the copy. Actually, with copies four versions were involved. When discovery was compelled, Dr. Mohsen reported that his car had been broken into and the notebooks stolen. He then presented a 1989 Daytimer to support his patent claims, but the ink was not manufactured until 1994. Then portions of the missing notebooks were mailed to him anonymously. Other documents returned had an incorrect ZIP Code but the anonymous mailer used the correct one. The Court noted that in five instances in the notebooks "1998" was written first and changed to "1989." Dr. Mohsen's brother witnessed pages in the notebooks by writing "read and understood" and signing, five such pages being blank but for a large X. At an evidentiary hearing Dr. Mohsen took the Fifth. The District Court's finding of falsification and extreme litigation misconduct was upheld upon appeal.

COMMENTARY: Neither the ink expert nor the method used to date the 1994 ink is identified in the appeal decisions, but the District Court decision sets it all out. Opinions of Speckin for defendant are generally accepted, while those of Lyter for plaintiff are critically assessed and rejected when at odds with Speckin's. Relative ink aging is rejected, though Brunelle testifies in its favor.

*EEOC v Ethan Allen*, 259 F.Supp.2d 625 (US DC N.D. Ohio 2003), offers this quote from *Aptix*: "The Court will not place any reliance on the results of Expert Speckin's 'relative-ink-date testing,' also known as 'accelerated aging.' The Court recognizes that the methodology is vouched for by both Experts Speckin and Brunelle, the latter especially preeminent in the field. The problem is that the test tries to draw large conclusions from tiny differences in leach rates and to do so after artificial 'accelerated aging' (i.e., heating in an oven) of part of the test sample (so as to provide a 'known' old sample for comparison). Each was tested at different durations of leaching to detect differences in the leach rates. In all cases, most of the differences at various durations were inconclusive and, at most, only a few were conclusive."

21. *U.S. v Alteme*, No. 99-8131-CR (S.D. Flor. April 7, 2000)

A source said this was a *Daubert* handwriting case, but I have not been able to retrieve it.

22. *U.S. v Fujii*, 152 F. Supp. 2d 939 (N.D. IL 2000); 152 F. Supp. 2d 942 (N.D. IL 2000); affirmed, 301 F.3d 535, 2002 U.S. App. LEXIS 16684, 59 Fed. R. Serv. 3d (Callaghan) 512 (7 Cir 2002)

Although there is a subsequent appeal decision, the case is placed with District Court cases since the handwriting issue was apparently not appealed, certainly not being addressed in the appeal decision.

152 F. Supp. 2d 939:

Defendant moved *in limine* to exclude Karen Ann Cox, Government handwriting expert, who said that defendant had made out certain handprinted immigration forms. At page 940: “[T]he court concluded that, at least in the peculiar circumstances of this case, Ms. Cox’s testimony is inadmissible under the standards of *Daubert*.” Seemingly accepting Saks’ general views rejected by other courts, the Court states at page 941: “The government has offered no evidence that Ms. Cox’s expertise extends to making an identification of handwriting when the handprinter[s] in question are native Japanese writers.” Defense had an expert in English as a Second Language testify that Japanese are taught to write with exact precision and minimal individuality, a trait carrying over to their learning to write English: “In my opinion, it would be very difficult for an individual not familiar with the English handwriting of Japanese writers to identify the subtle dissimilarities in the handwriting of individual writers.” At page 942 Ms. Cox added two principles to the usual two: a skill level one cannot surpass and repeated habits and peculiarities. The last troubled the Court: “There is no evidence in the record that Ms. Cox has such expertise or has even considered the problem Mr. Litwicki has pointed out.”

2002 U.S. App. LEXIS 16684:

Fujii was convicted of immigration violations, including smuggling aliens into the country, and sentenced to 36 months of imprisonment.

COMMENTARY: There are excellent peer reviewed, published research papers on Asian writing and the special principles in identifying it. Anyone presuming to do such work and testify about it ought at a minimum read these papers and submit them as bases for an opinion. Further, there is no lack of Asian experts in America or experts who have experience in such matters, and one is well advised either to obtain assistance of someone competent in the language or to pass the commission to an associate who has greater competence in the specific issue in dispute. See reference to the Cheung and Leung paper in my monograph, *A Challenge to Handwriting Experts and an Answer to Their Critics*,” Section G.

As for Mr. Litwicki, all evidence from this man was based on his experience and experience alone, from which he “avers” all his opinions. Yet one of the most repeated criticisms of handwriting expertise is that it is based on experience alone, making it entirely subjective. Did Saks point out to the Court that perceived weakness in Litwicki, or did being in agreement with Saks and being hired by the same party as Saks make what is a flaw in handwriting experts a virtue in a friend?

Two things suggest handwriting expertise is often secondary evidence. The government did not appeal the rejection of it by the trial court. Conviction was had and upheld on appeal anyway.

23. *U.S. v Rutherford*, 104 FS2 1190 (D. Neb 2000) District Court, Nebraska, 8:99CR120, March 2000

Indicted for bank fraud and for retaliating against a witness, defendant made a motion *in limine* to exclude Government’s document examiner, Marlin Rauscher. The usual *Daubert* experts appeared for each side, Saks and Kam. At page 1193: “[R]auscher admitted that he was not given an opportunity to examine a greater universe of people who could have possibly written the check and load-out sheet, other than the defendant who wrote the exemplars and the checks.” Then he said identification is based on “subjective satisfaction of the FDE” and “he

knew of no generally accepted published standards governing handwriting analysis that are both empirically based and regularly peer-reviewed.” So the usual Solomonic split was given with additional ruling that there was no evidence addressed to support the nine-level scale of probabilities.

COMMENTARY: It becomes very tiresome reading the same superficial assertions by the same unknowledgeable “experts” for each side of the argument. However, in accordance with common prosecutorial practice only one potential writer, the one the Government had already accused of doing so, was provided to Rauscher to find out whether he was the writer or not. No matter how “above the fray” the examiner is, any appearance of either suggestion or suggestibility will tarnish the greatest reputation for integrity. It ought to be routine to submit equal exemplars for all potential writers as much as practical in the situation; and they all ought, if possible, be submitted unnamed.

The “subjective satisfaction” criterion ought to disqualify any expert immediately and totally, yet some examiners make big money being completely subjective, and in so doing they tarnish the rest of us almost beyond future polishing and restoration. That the alleged nine-level scale is in truth a five-level scale will be discussed later. In this case, an astute document examiner as defense consultant could have had the witness excluded, because there are objective, published, commonly employed standards for making handwriting identifications and eliminations.

The numbers game in handwriting identification is that there must be *no* significant differences which cannot be reasonably explained and there must be a complex of significant similarities that characterizes the entire pool of exemplars and that makes for a reasonable probability that no other writer, from among those who could have done so, made the questioned writing. And that returns us to the efficacy of seeing exemplars from the entire pool of reasonably possible writers. Please be aware that this applied to identifying a writer. For eliminating a writer we need only make a comparative examination of the single suspect’s writing.

## 2001

24. *Jackson, Petitioner, v Anderson, Warden Respondent*, 141 F.Supp.2d 811 (D.C. N.D. OH 2001)

A document examiner testified defendant had written a note in question.

COMMENTARY: A case of routine admissibility.

25. *Katt v City of New York and DiPalma*, 151 F.Supp.2d 313 (US Dist. Ct. S.D. NY 2001.)

At page 323: “Though DiPalma testified that he could not recall whether he had inscribed the photograph (Tr. 631-33), plaintiff presented an expert forensic document examiner to demonstrate that he had. This expert witness, James M. Palladino, testified that upon comparing the inscription on the photograph with four separate samples of DiPalma’s handwriting (PX 34 & 35), his ‘definite and conclusive’ finding was ‘that the writing in the border of the photograph was in fact written by Anthony DiPalma.’ (Tr. 461.) Palladino painstakingly described to the jury the process by which he analyzes documents and handwriting samples, presenting the inscribed photograph alongside one of DiPalma’s handwriting samples, he demonstrated, letter by letter, ‘that the two sets were in agreement or similar in all important details and contained no



significant difference.’ (Id. 467)”

COMMENTARY: “Painstakingly described” is certainly a commendable way to leave no doubt about one’s opinion and the bases for it.

26. *U.S. v Richmond, et al.*, 2001 US Dist LEXIS 15769 (E.D. LA 2001)

Defendant brought motion to exclude testimony of handwriting expert, Gale Bolsover. While “certain courts have recently rejected the testimony of certain handwriting experts, this Court refuses to rule that such testimony is prohibited” under the rules. Assessing the testimony in context of the case, the Court noted that cross-examination would test reliability. Motion was denied.

COMMENTARY: No specific analysis was given of the challenge or of the Government’s response, but it is nice to know some judges refuse to have a lemming-like urge to jump off the cliff of reasonability into uncharted legal seas.

27. *U.S. v Saelee*, 162 FS2 1097 (D. AK 2001)

Handwriting evidence is not admissible as reliable. Michael J. Saks was expert for defense and John W. Cawley, III, for the government. The latter was excluded both to give observations and to give opinion. He did not come under Rule 701 as lay opinion (he claimed scientific underpinnings), nor under Rule 702 as expert (no showing of reliability), nor under 901, since 901(b)(3) is for an expert witness who must pass 702 first. The Court explained this was not a universal finding but that in this case the government failed completely to show reliability.

COMMENTARY: I think this case is an excellent analysis of the rules and of the studies handwriting experts relied on at that time. The theory given is the silly two rules of no two persons writing like each other nor of any one person writing like oneself, that is, writing differently every time. This case is an excellent list of all the things a handwriting expert can do wrong in a *Daubert* hearing. Study it if you are a handwriting expert facing a *Daubert* hearing.

## 2002

28. *U.S. v Brewer*, No. 01 CR 892, 2002, U.S. Dist. LEXIS 6689 (N.D. IL Apr. 12, 2002); 2002 WL 596365 (N.D. IL 2002) Memorandum Opinion and Order.

Defendant produced only in photocopy a letter allegedly authorizing him to withdraw funds from an aged and ill man’s account. The man, now deceased, had denied giving such authorization. Government’s document examiner, Danielle Seiger, had found “that the Questioned Signature superimposes one of the known signatures, and that extraneous markings on the Questioned Signature correspond to background printing that appears on the same known writing.” Defendant requested an *in limine* hearing on basis expert handwriting evidence was inadmissible under *Daubert*. The Court, reviewing recent cases excluding handwriting comparison, concluded that “the government has offered no argument or even a hint of the type of evidence that it would put forward to prove the reliability of the handwriting comparison testimony.... Although a hearing might be helpful if the court were writing on a clean slate, the court’s review of these very recent handwriting analysis cases, and in light of the very similar type of testimony at issue here, leads it to conclude that unless some new studies have been

conducted in the past six months, the government would be hard-pressed to establish that Seiger's testimony would be sufficient under *Daubert*. Thus, the court grants defendant's motion to exclude Seiger's testimony."

COMMENTARY: I quote the ruling at length because it shows someone did a miserably poor job of presenting a brief or some argument for reliability of the proffered evidence. It was not a handwriting comparison such as the cases cited in the opinion considered, namely *Saelee* and *Fujii*. It was purely a technical comparison of written forms to show their physical correspondence. No conclusion as to authorship was required. There is a substantial amount of literature on the technique involved and its reliability, commonly known as a "cut and pasted" signature. Immediately after the last sentence quoted above, a paragraph cites two cases where testimony as to handwriting comparison was admissible. In 2002 the Court ought to have been provided a baker's dozen of cases in support of handwriting expertise, mostly at the appeal level. I believe this case is merely evidence of abysmal incompetence by the prosecuting attorney. Seiger's examination as described was masterful.

29. *U.S. v Broten, et al.*, Case No. 01-CR-411 (DNH) N. Dist. NY. 3/25/02. Memorandum-Decision and Order.

Motion to exclude handwriting analysis evidence denied, because "number of cases which have admitted expert handwriting opinions is probative of the reliability of those opinions."

COMMENTARY: The reasoning that the *Broten* Court quotes from *United States v. Buck*, No. 84 Cr. 220-SCSH, 1987 WL 19300 (S.D.N.Y. Oct. 28, 1987), is explicitly disapproved of by the critics. However, that other legal authors have accepted the original trio's anti-handwriting arguments is cited by them as probative of the reliability of their own opinions. Thus, they unwittingly take the position that rule of law from courts ought not be taken as reliable precedent, but that opinion about law in legal journals ought to be.

30. *U.S. v Gricco*, No. 01-90, 2002; WL 746037; 2002 US Dist. LEXIS 7564 (E.D. PA 2002); mandamus denied *In Re Carmen Gricco*, 2004 U.S. LEXIS 5449, 125 S. Ct. 290, 160 L. Ed. 2d 209, 73 U.S.L.W. 3215 (US 2004); certiorari denied in *Gricco v U.S.*, 2005 U.S. LEXIS 1875, 125 S. Ct. 1387, 161 L. Ed. 2d 157, 73 U.S.L.W. 3497 (US 2005)

Defendant's *in limine* motion to exclude identification testimony of handwriting expert Gale Bolsover was denied. Bolsover followed the same methodology that Bonjour did in *Velasquez* and that was recommended by SWGDOC: determine whether questioned writing permits identification; determine whether the exemplars do; if both do, compare their identifying characteristics; consider both similarities and differences. "An identification is determined when there is a significant number of similarities among handwriting characteristics absent any unexplainable differences." A reexamination is made by another expert at Postal Service, and a report issued only after agreement is reached. In essence defendant argued all standards are left to subjective opinion of the examiner as "proven" by the article, D. Michael Risinger, et al., "Exorcism of ignorance as a proxy for rational knowledge; the lessons of handwriting identification expertise," *University of Pennsylvania Law Review*, 82:805-17 (June 1934). As to the studies that article relied on, "The Court finds reliance on the studies flawed," and lucidly explains why, noting the article itself recognized the flaw at one point. Kam and Srihari are cited

as supportive of reliability as well as Circuit Courts affirming admissibility. The District Court found that the analysis “by Ms. Bolsover is based on valid reasoning and reliable methodology.”

The Court also discussed the *Daubert* factors to which it added the Third Circuit’s decision in *Downing*, 753 F.2d 1224, 1238-1239, which set forth factors not found in *Daubert* and allowed the flexible analysis *Kumho* approved of. The Court seems to say that the several factors are in addition to *Frye* general acceptance, not additional tests to pass to prove reliability. Footnote 8 at page 742 of *In Re Paoli Railroad Yard, PCB Litigation (Paoli II)*, 35 F.3d 717 (3 Cir 1994), gives the combined eight factors: “Thus, the factors *Daubert* and *Downing* have already deemed important include: (1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique’s operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put.” The Court was sufficiently satisfied on all points, noting for the last point that Ms. Bolsover and her colleagues did analyses for Federal Communications Commission, Smithsonian Institute and Postal Service.

COMMENTARY: This case is recommended to your study as an exemplary coverage of all factors. The *In Re Paoli Railroad Yard* reports are recommended to the study of all expert witnesses and attorneys calling them to courts following Federal rules. The various *Paoli* reports are 706 F.S.2d 358 (E.D. PA 1988); rev & remand, 916 F.2d 829 (3 Cir 1990) [*Paoli I*]; on remand, 811 F.S.2d 1071 (E.D. PA 1992); affirmed in part and reversed in part, 35 F.3d 717 (3 Cir 1994) [*Paoli II*].

31. *U.S. v Hidalgo*, 229 F.S.2d 961 (D.C. AZ 2002)

William J. Flynn and Moshe Kam were experts for the prosecution and Michael J. Saks for defense. The Judge discounts the Srihari study and citations to studies of twins. As to the latter, at page 963 the so-called “second principle” of handwriting identification is referred to: “Because forensic document examiners assert that no person writes the same way twice (*see* Flynn Aff. at 2-3), it is hard to say how the examiners accurately concluded that none of the participants wrote identically.” Then is immediately added the reason why the twin studies are not probative of reliability of handwriting experts: “Forensic document examiners were not asked to distinguish between the handwriting of identical twins in any of these studies. We therefore do not know whether the handwriting of identical twins is sufficiently differentiated for practical purposes.

“We are, of course, aware that it would be impossible to analyze and compare the handwriting of every literate person. Uniqueness must therefore be demonstrated, if at all, inferentially.” In the end, only examiners’ assertions support uniqueness.

The Government was more successful at establishing examiners’ skill as surpassing that of lay persons. At page 965, regarding Kam’s studies, Saks “claims that while most non-professionals performed poorly, a few performed as well as professionals. He contends that this shows that those non-professionals were motivated while others were not, and that motivation positively correlates with outcome.

“We do not agree. The worst professional made two errors. The best non-professionals made about nine errors, while the worst non-professional made about forty-four errors. Even the worst

professionals clearly outperformed the best non-professionals.”

At page 967, the Court offers this logic: “If the principle of uniqueness could be proven, then one would know how to analyze handwriting or handprinting with an error rate of zero percent. But there is no support for the proposition, nor does the government contend that document examiners have a zero percent error rate.”

The Judge does a *Starzecpyzel* split-the-baby decision: Flynn cannot testify that defendant wrote any questioned document, but he can say anything else that would help the jury to make an identification or not.

COMMENTARY: In all these split decisions, the critics are right that they are inherently contradictory. The witness will give all the premises for his conclusion but leave the inescapable and inevitable conclusion to the jury. Nor would the witness ever give a fair presentation of all that would support the conclusion contrary to his own. That Saks is once more caught misrepresenting data from a research paper he claims to have studied is of no surprise since we will see from several cases considered herein that these people have a habit of doing that. The Judge also rightly rejected the speculative interpretation of the misrepresented data, namely that motivation accounts for all differences in performance. Well, Saks must be strongly motivated to maintain his own level of error and of his baseless assertions. Not exactly baseless, since as Moenssens noted in his critique of *U.S. v Crisp*, courts and critics alike can only find “scientific” and academic support for the criticisms by quoting prior criticisms from the same sources.

### 32. *U.S. v Kirby*, ND GA May 2002

In his 2006 AAFS presentation Robert J. Muehlberger cited this as a *Daubert* case finding for admissibility. It seems that he testified in this case.

## 2003

### 33. *American National Fire Ins. Co. v Mirasco, Inc.*, 265 F. Supp. 2d 240 (US Dist. Ct. SD NY 2003)

“Horan, a forensic document examiner, will testify regarding the purported alterations, additions and changes to the purported Rejection Certificates. Mirasco challenges Horan’s qualifications inasmuch as he has not demonstrated a working knowledge of Arabic and also challenges his expected testimony as irrelevant or cumulative of testimony presented by other experts. To the extent that Horan’s testimony attempts to translate the marks that he claims were added to the Certificates, such testimony will be precluded. However, he is qualified to testify as to the addition of marks to a document, and such testimony is relevant to support the later anticipated testimony of the Insurers’ other witnesses who will testify as to what they believe are changes and alterations to the documents. Therefore, Horan may testify to the limited issue of what marks he believes were added, but not to the issue of what those marks mean.”

COMMENTARY: My guess would be that Horan would have never presumed to testify as the court forbade. One need not know the meaning of writings to make a proper identification nor to determine alterations, deletions or additions. One should, however, be conversant with the professional literature, especially reported research, regarding the script under examination.

34. *Equal Opportunity Employment Commission v Ethan Allen, Inc.*, 259 F.Supp.2d 625 (US DC N.D. Ohio 2003)

Erich Speckin was retained by Ethan Allen as its ink dating expert, so EEOC retained Al Lyter. Speckin was ruled unreliable in all his performances in the case.

COMMENTARY: Along with *In re Estate of Wang Tei Huei*, 2002 WL 1341762, [2002] HKEC 1424 (Hong Kong Special Administrative Region Ct. of First Instance, Nov. 21, 2002), this report is well worth study as a guide to concise and thorough analysis of theory and methods used by Speckin, and by inference as used by Lyter.

35. *U.S. v Adkinson, et al.*, 256 F. Supp. 2d 1297 (US Dist. Ct. ND FL 2003)

“Collins also claims expenses Ramsey paid related to expert witnesses. The EAJA expressly permits reimbursement for reasonable expenses of expert witnesses.[23] 28 U.S.C. §§ 2412(d)(2)(A). This case was very document intensive and verification of the authenticity of documents was critical to the defense. Collins claims \$6,862.59 for fees and expenses Ramsey paid to Lamar Miller, a document examiner. Miller’s affidavit (doc. 999 at tab 10) states that his rates for services were \$75.00 per hour for document examination and \$60.00 per hour for travel time. Miller’s affidavit states he billed Ramsey for a \$600 retainer, 21.6 hours of examination time, 18 hours of travel time, and three days of court appearance at \$600 per day.[24] I find these rates and hours to be reasonable. Ramsey’s trust account ledger lists a total of \$6,862.59 in payments to Miller, but Miller’s affidavit states a total \$6,022.59. Collins is awarded \$6,022.59 for Miller’s services. The government objects to the payment of Collins’ claim of \$6,800 in fees to David Crown and \$500 to James Daniels, both document examiners, because Collins offers no supporting documentation for those claims other than Ramsey’s trust account ledger. However, Ramsey’s ledger verifies these payments were made, and in the interest of leniency towards Collins’ record-keeping, Collins is awarded the full amount for these services. A \$50 retainer fee Ramsey paid to Charles Williams, a banking expert, is also granted. Accordingly, Collins is awarded \$13,372.59 for expenses related to lay and expert witnesses.”

COMMENTARY: The expert witness fees were ordered reimbursed by the Government because the failed prosecution of defendants for conspiracy was without merit.

36. *U.S. v Oskowitz*, 2003 US Dist LEXIS 22093 (E.D. NY 2003)

Defendant brought motion to exclude expert handwriting testimony by John Paul Osborn for the usual arguments based on *Daubert*. No defense expert is indicated. The Government submitted no material to support reliability and cited one case, *U.S. v Rivera*, wherein the testimony does not seem to have been challenged. Nevertheless, Osborn could testify to similarities and differences but not to an identification.

COMMENTARY: Did Osborn supply to the attorney calling him at least papers from *Journal of American Society of Questioned Document Examiners* and *Journal of Forensic Sciences*, official journal of American Academy of Forensic Sciences, two organizations to which he belonged? Or papers presented at various conferences since the *Daubert* issue arose? And did not the expert and the Government attorney know of the circuit court opinions all coming down in favor of admissibility? Once more someone failed miserably. By 2003 no challenge ought to have been permitted to arise without the kind of reply given in *Gricco*. See Item 30 above.

Like many courts, this one accepted the critics' argument that handwriting identification by experts has not been proven better than that by lay persons, so it fails an essential scientific test for reliability. I have refrained from commenting on this idea about scientific testing because it is so patently fallacious. I refrain no longer.

Have brain surgeons been compared to lay persons performing the same surgery? Have law professors been compared to lay persons teaching the same classes? Whoever thinks such a silly idea has any necessity in any forum other than those which the anti-expert experts inveigh against? Certainly not any field they claim expertise in. When testifying, they ought to be challenged: "Have you been tested against lay persons in the kind of expertise you claim today? No? Then how can you claim reliability since you have never undergone the very tests you demand of others?" If they are unfazed by the thought that they, who are above all others, need to subject themselves to the rigors others ought undergo, at least their absurdity can be shown if not some hypocrisy inferred.

Summaries and commentaries on all cases cited in Footnote 1 of *U.S. v Oskowitz* are included in this work.

37. *Wolf v Ramsey*, a)253 F.Supp.2d 1323 (US DC ND GA 2003)

Testimony by Gideon Epstein for plaintiff was restricted to observations of "perceived" similarities and differences only. He could not express his opinion "that he is '100 percent certain that Patsy Ramsey wrote the Ransom Note.'" Additionally six other experts who examined original note said Mrs. Ramsey could not be identified as writer, so summary judgment was granted to defendants.

COMMENTARY: This is the standard compromise ruling, which I think ought not be given for reasons expressed elsewhere in this text. As the old saying has it, such a ruling is neither fish nor fowl nor good red meat. Epstein held ABFDE certification. I believe the Court wrote at great length, far greater length than necessary as if twice compelled to justify its justification for throwing the case out.

2004

38. *Bangkok Crafts Corporation v Capitolo Di San Pietro in Vaticano; Capitolo Di San Pietro in Vaticano v Treasures of St. Peter's in the Vatican Ltd., et al.*; No. 03 Civ. 0015 (RWS). (US Distr. Ct. S.D. NY 2004)

Relevant quotes: "In contrast to Loata's hearsay assertions, the testimony of Capitolo's handwriting expert and forensic document examiner have not been challenged, nor has the denial by Sodano of the authenticity of the January 2, 2001 letter." Loata testified for Bangkok Crafts. Capitolo's motion for partial summary judgment and all other issues discussed by the report were resolved against plaintiff.

COMMENTARY: A case of routine admissibility.

39. *In re De Jesus Alatorre Pliego*, 320 F. Supp. 2d 947 (Dist. Ct. D. AZ 2004)

At page 949, having had "Attachment 2" identified as from Alatorre's file, "The Government then called Joe Carbajal who testified he was a friend of respondent Alatorre's and that he

received checks from Mr. Alatorre in 1999 and 2000. He then testified that he compared the signatures on the checks he received to the signature on Attachment 2 of the certified documents (a contract) and he believes the signatures look the same. Respondent objected to this testimony and the Court found it to be improper lay testimony regarding signature identification. According to Mr. Carbajal, Exhibits 20 and 21 are checks he received from respondent.

“At the extradition hearing, over objection of the United States, respondent Alatorre called Sandra Ramsey who testified that she is a forensic document examiner with many years experience in law enforcement (state and federal), she is certified by the American Board of Document Examiners, she is published and belongs to numerous professional organizations and she has qualified as an expert witness in both state and federal court. She testified she took known signatures of respondent Alatorre and requested specimens from Mr. Alatorre, and compared these known signatures to the signature on Attachment 2 (the contract sent from Mexico which is the basis for the alleged fraud). It is her opinion that the signature on Attachment 2 is not a genuine signature but rather a simulation of the natural signature of the person who wrote the known signatures. She testified the signature on Attachment 2 is substantially different from the knowns and the requested specimens.”

COMMENTARY: Ms. Ramsey’s full name is Sandra Ramsey Lines. She started her career as an Arizona government examiner and is associated with ABFDE, ASQDE and AAFS. One is curious to know grounds on which the Government objected to her testifying. They would necessarily be far-fetched. Carbajal did a comparative examination, while a lay witness to handwriting must be restricted to memory, making a mental comparison only. The report seems to say that Ramsey took newly written exemplars from her client. If so, this violated the *post litem motam* rule and should have been objected to by the Government. The rule is that one may not create evidence specifically to support one’s own testimony or claim, the landmark federal case being *Hickory v U.S.*, 151 US 303, 14 Sup Ct 334, 38 L.Ed. 170 (W Dis Ark. 1894); reversed and remanded 160 US 408, -- L.Ed. 474 (1896).

40. *Sajo, et al., v Bradbury*, No. CV 04-853-PA. (US Dist. Ct., D. OR 2004)

James A. Green, a forensic document examiner, “disagreed with decisions by Elections Division staff to reject circulator signatures. Green stated that the Elections Division’s practice of using a single signature sample, usually from the circulator’s voter registration card, often led to incorrect rejections because of natural variations over time and under different circumstances. Green testified that he would need at least two hours to conduct a single, straight-forward signature comparison. Green found that the Elections Division staff had received inadequate training in handwriting comparison.”

The challenge was dismissed as moot due to legal factors.

COMMENTARY: However correct Green might have been technically, in pragmatic terms it would cost more to challenge an election on basis of invalid petition signatures than to hold the election. From information in the case report, I calculate at least 226 signatures of circulators were rejected as invalid. At one hour per signature for examination as Green would need if his skill improved over time, and assuming a low rate of \$100/hour, the Elections Division would have to expend \$22,600 to justify their decisions in this instance alone. Apparently, if they did not reject a signature, the usual brief, one-to-one comparison would be acceptable, otherwise the



total would grow to 4,743 circulator signatures at \$100 a pop. Such a method would enrich document examiners but soon bankrupt the state. There do come moments when practicality trumps the self-interested ideals of academics, scientists and expert technicians.

41. *U.S. v Rudolph*, Case No. 2:00-cr-422-CLS-TMP (United States District Court, N.D. Alabama, Southern Division. December 21, 2004)

In response to defense request for discovery of work product of Government experts, “The Government admits that neither Mr. Hankerson nor Mr. McClary kept any contemporaneous notes during their initial analyses of fingerprints and handwriting samples. Rather, the Government indicates that when these experts testify they will explain at that time points of comparison that support their opinions that the fingerprints and handwriting match those of the defendant. Because both experts analyzed hundreds of fingerprint and handwriting samples, but kept no notes of the process, neither is now able to reconstruct the actual points of comparison they originally relied upon years ago in reaching the opinions they expressed.”

The court ordered the Government to disclose by a date certain the opinions of the experts and the current bases for them, noting that waiting for trial would prevent a proper defense.

COMMENTARY: The defense should have moved for their testimony to be barred entirely for gross failure to follow basic scientific procedures and violation of industry standards as stated in ASTM standards, such as for lab notes and reports. If such a motion had been made, the court should have granted it. At some point the protection from integrity and honesty the Government enjoys in criminal prosecutions must end. The more stringent rules for civil cases should be made even more stringent, rather than hardly stringent at all, for criminal cases since so much more is at stake for a criminal defendant. I would not have thought Carl McClary would have followed such unprofessional work habits given his leadership role in ASTM. However, given the shameful suicidal demise of ASTM Sub-Committee E30.02 for Questioned Documents in 2012, mostly through heavy block voting by prosecutorial experts, one’s kind presumptions in thinking on several issues might need serious revision.

42. *Wheeler v Olympia Sports Center, Inc.*, Docket No. 03-265-P-H. (U.S. District Court, District of Maine, October 12, 2004)

Defendant’s *in limine* motion was granted to exclude testimony of Wheeler’s handwriting expert, Curtis Baggett, the reasons being set forth in the segment titled, “II. Motion to Exclude Testimony.” Among other deficiencies mentioned is: “Here, Baggett offers no details about his methodology, beyond ‘comparing’ the handwriting on several documents.” Anyone could compare such handwriting and reach a conclusion, while Baggett’s bare bones statement about his methodology is insufficient for the court to determine whether it meets *Daubert* criteria.

COMMENTARY: This case is an exception to the criterion that only court decisions or case reports on in-person testimony are included in this compilation. However, due to my regard for the extraordinary (“extra” meaning outside of, beyond what is ordinarily done, and this expert can be considered definitely outside of and beyond) claims of this individual, I include it. Hopefully cases like this one will inspire more judges to bestow on this witness the just measure of his practices as a handwriting expert.



## 2005

43. *U.S. v Crounsset*, 403 F.Supp.2d 475 (D.C. E.D. VA 2005)

The Government presented the testimony of Donna Eisenberg, a forensic document examiner.

COMMENTARY: A case of routine admissibility.

44. *U.S. v Ojeikere and Ojeikere*, No. 03 Cr. 581 (JGK). United States District Court, S.D. New York. February 17, 2005.

Defendants' request for *Daubert* hearing on reliability of proposed testimony of Gus Lesnevich granted with agreement of Government that it was proper at least as to his conclusion of authorship of questioned writings. Defendants did not challenge qualifications, but only reliability.

COMMENTARY: These types of cases tend to repeat the same analyses in the same order and in the same words with references to the same cases. It would save us all much time and money if there were a book of boilerplate opinions so that courts could just reference the ones they want by number. I suspect they do have some such resource, but cut-and-paste entire passages, adding a little individual touch to bolster the image of personal perspicacity. Hopefully, I will come across the result of the hearing so it can be added to this ruling.

## 2006

45. *A.V. by Versace, Inc., v Versace, et al., and related cases*, 446 F.Supp.2d 252 (DC SD NY 2006)

Footnotes 14 and 15 describe in detail the relevant issues. Julia Bevacqua was plaintiff's handwriting expert.

"[14] Gianni objected to Bevacqua's testimony not on the basis of her individual qualifications, but rather on the grounds that the testimony of handwriting experts does not, as a general matter, satisfy the standards set forth by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999) for expert testimony. Mindful of the *Daubert* factors, the Court found Bevaqua qualified under Federal Rule of Evidence 702 based on her 'knowledge, skill, training, experience, [and] education,' Fed.R.Civ.P. 702, and because her testimony would 'assist the trier of fact . . . to determine a fact in issue,' *id.*, viz., the authenticity of the signature on the Letter of Intent. The Court is aware of no case in this jurisdiction in which a district court has excluded the testimony of a handwriting expert based on a finding that forensic document examination does not pass the *Daubert* standard. Moreover, although some district courts have restricted the testimony of handwriting experts to explaining to a jury the similarities and differences between known and questioned handwriting samples, see, e.g., *United States v. Oskowitz*, 294 F.Supp.2d 379, 383-84 (E.D.N.Y.2003) (collecting cases), the Second Circuit has never held that a handwriting expert may not offer an opinion on the ultimate question of authorship. In fact, every circuit court that has considered this question has concluded that a properly admitted handwriting expert may offer an opinion regarding the authorship of a handwriting sample if the factors enumerated in *Daubert*

are satisfied. See *United States v. Prime*, 431 F.3d 1147, 1151-54 (9th Cir.2005); *United States v. Crisp*, 324 F.3d 261, 271 (4th Cir. 2003); *United States v. Mooney*, 315 F.3d 54, 61-63 (1st Cir.2002); *United States v. Jolivet*, 224 F.3d 902, 905-06 (8th Cir.2000); *United States v. Paul*, 175 F.3d 906, 909-12 (11th Cir.1999); *United States v. Jones*, 107 F.3d 1147, 1161 (6th Cir.1997); *United States v. Velasquez*, 64 F.3d 844, 850-52 (3d Cir.1995).

“[15] Instead, Gianni offered Mark Denbeaux, a law professor, to testify not as a handwriting expert, but rather as a critic of the field of handwriting analysis in general and to the weight that the Court should place on Bevacqua’s testimony. (Hr’g Tr. 215:24-216:4, May 10, 2006.) Denbeaux himself was clear that he was not a handwriting expert. (Hr’g Tr. 212:12-14 (‘I have never said I’m a handwriting expert. I am an expert on the methodology and defects of handwriting [analysis]. It is quite a different thing.’). The Court, recognizing its own capability of assessing the weight of Bevacqua’s expert testimony and thus finding that Denbeaux’s testimony would not ‘assist the trier of fact,’ Fed.R.Evid. 702, in determining the authenticity of the signature on the Letter of Intent, found that Denbeaux was not qualified to testify as an expert under Rule 702. (Hr’g Tr. 218:2-13, 225:11.)”

COMMENTARY: One wonders if Risinger, Denbeaux’s colleague in forensic belligerence, would class this judge among the hordes of judges who are scientifically too unenlightened to kowtow to their pronouncements.

46. *Alfieri v Guild Times Pension Plan*, 446 F. Supp. 2d 99 (US Dist. Ct. E.D. NY 2006)

At page 107: “As a finding of fact, the Court finds that Janice Alfieri did sign the ‘spousal consent’ form. The Court credits the unrefuted testimony of Gus Lesnevich, the forensic document examiner....” However, Lesnevich could not say anything else about the document, such as when it was signed. The court found it invalid after some close reasoning based on all the evidence.

COMMENTARY: A case of routine admissibility.

47. *Bristow v City of Spokane, et al.*, Order (U.S. Dist Ct., E.D. WA, Oct. 16, 2006)

Detective C. Brenden’s examination of handwriting by comparing questioned and exemplar writings through imposition on a light table was found to be unreliable. Expert Chris Baggett said Brenden’s analysis had no scientific validity. For his “qualifications” to offer such an opinion, see the *Wheeler* case immediately preceding. Expert Hannah McFarland found significant differences. The City failed to train fraud unit detectives properly in handwriting analysis yet depended on their analysis.

COMMENTARY: This decision can be considered a commendation for forensic handwriting identification provided proper methodology is employed. “Chris Baggett” is probably a mistype for “Curtis Baggett.”

48. *Brown v Primerica Life Insurance Company*, Case 1:02-cv-08175. United States District Court, Northern District of Illinois, Eastern Division, Charles P. Kocoras, Chief Judge, Decision, June 15, 2006.

The decision begins: “This matter comes before the court on cross-motions for summary judgment.

“For the reasons set forth below, we grant the motion of Primerica Life Insurance Company (‘Primerica’) for summary judgment. Plaintiff Carolyn Brown’s motion for summary judgment is denied.

“The facts pertinent to this cause of action were set forth in our prior opinion addressing Primerica’s motion to strike Curtis Baggett’s testimony. *Brown v. Primerica Life Ins. Co.*, No. 02-CV-8175 (N.D. Ill. Apr. 29, 2006). Accordingly, we restate them here only in truncated form.”

COMMENTARY: Brown had the burden of demonstrating for the Judge evidence credible enough to persuade a jury of her claim of forgery. Curtis Baggett was the staff she leaned on for that, but her leaning on it merited the words of the Prophet Jeremiah to ancient Judah when it leaned on Egypt to save it from the Neo-Babylonians. It was a shaft that not just snapped when leaned on but, splintering, impaled the one relying on it. Thus Baggett’s failure to demonstrate reliability for his proposed testimony doomed Brown’s case to failure. As the Court concluded: “The sole evidence Carolyn presented to counter Primerica’s evidence was Baggett’s testimony. In light of the fact that his testimony was stricken, all that is left is what Primerica offers. That track leads to a single terminal: Primerica complied with its contractual obligations. Accordingly, there was no breach. Primerica’s motion for summary judgment is granted and Carolyn’s is denied.”

Baggett was quoted later in 2006, in connection with his undoubted identification of John Mark Karr as writer of the JonBenet Ramsey ransom note, that he had been disqualified as an expert witness in courts of law only four times. The *Brown v Primerica* case and others make us suspect the gentleman was being modest concerning his capacity to accomplish such a feat more often than any other proffered expert witness that many of us know about.

49. *Cuna Mutual Life Insurance Co. v Apodaca and Cruz*, U.S. District Court for the District of Colorado, Civil Action No. 06-cv-00582-MSK-MEH. Recommended Motion for Payment of Funds Deposited with Court, Sept. 29, 2006.

In a settlement process, handwriting expert, Darla McCarley-Celentano, expressed a highly probable opinion. This was legally “a conclusion” to satisfy a stipulated agreement by the parties for distribution of moneys. ASTM nine-step terminology was recognized as authoritative.

COMMENTARY: The ASTM terminology is granted another feather in its cap. Approvals by courts of law outnumber disapprovals.

50. *Dracz v American General Life Insurance Co.*, 426 F.Supp.2d 1373 (M.D. GA 2006)

At page 1377, the handwriting fact at issue was whether the “Yes” or “No” answer box for a question was checked first and who marked the other if not plaintiff. Plaintiff called Curtis Baggett “who examined a copy of Dracz’s insurance application and reached an opinion regarding the author and the sequencing of the marks in Question 5’s check boxes.” Defendant filed a motion *in limine* to disqualify Baggett, and the discussion goes to page 1380. Plaintiff claimed Baggett’s qualifications compared to the expert in *U.S. v Paul*, which is discussed later. The trial court explains why that is not so.

In summary, Baggett is ruled not qualified to testify. Further, even if he had been found qualified, his method was unreliable, and so he would still have been inadmissible. Don Lehew, a

colleague of Baggett's, submitted an affidavit. "The sole purpose of Mr. Lehew's affidavit is to bolster the credentials and report of Mr. Baggett...." Since Baggett was disqualified, motion to strike Lehew's affidavit was moot.

COMMENTARY: At page 1380 the Court notes that Baggett's methods are never explained so that they can be assessed. We who have worked in the field know it is physically impossible to do what Baggett claimed, which is to tell which of crossing handwritten lines came first when one has only a copy to work with.

51. *Garcia v Bubbles Enterprises, Ltd.*, Civil Action No. H-05-3199. (US Dist. Ct. SD TX 2006)

Garcia denied signing an arbitration agreement, then his counsel stipulated that he had. Nevertheless, since it was a matter of attacking integrity, defendant "presented the testimony of an experienced document examiner" that Garcia had signed. The court made its own examination and concluded the same.

COMMENTARY: A case of routine admissibility, but not so routine motive for the evidence.

## 2007

52. *Pittman v General Nutrition Corp.*, 515 F. Supp. 2d 721 (US Dist. Ct. SD TX 2007)

In footnote 38: "GNC retained a forensic document examiner, who concluded that Pittman, not his daughter, signed the receipt." Plaintiff's explanations on this one point at two different hearings contradicted each other on several points.

COMMENTARY: A fair number of times a convincing testimony by an expert will inspire new, creative explanations from opposing parties.

53. *Thomas v Sheahan, et al.*, 514 F.Supp.2d 1083 (US DC N.D. IL 2007)

Defendants' motion to bar the testimony of William F. Naber was granted because he was not an expert in documents and handwriting.

COMMENTARY: A routine case of rejection of the unqualified.

54. *U.S. v Lin*, Case No. CR-01-20071 RMW (PVT). (US DC ND CA 2007)

The defense motion to exclude the Government's handwriting expert is denied: "The court does not suggest that Cawley's opinions are free from challenge. To the extent that Cawley's handwriting analysis is flawed, that fact may be brought to the jury's attention, both through cross-examination and by presenting opposing expert testimony. However, the reliability of Cawley's handwriting analysis is sufficient to allow the jury to consider it."

COMMENTARY: William Cawley III wins one, though he must have done so on more than one occasion since the report said he had been a handwriting expert for almost 30 years. This compilation contains almost a handful where he fared not at all well, though the wording in this case intimates he barely squeezed by.

55. *U.S. v Yagman*, 2007 WL 4409618 (2007)

Bonnie Beal, handwriting expert, testified that she worked as a forensic document examiner for the Indiana State Police and was certified by the American Board of Forensic Document

Examiners. Over defense challenge, she was found to be admissible. Mark Denbeaux was also permitted to testify but had limits placed on his testimony. The usual academics on either side are cited and discussed as are most of the usual past cases.

COMMENTARY: A case of routine admissibility and the boringly routine and repetitive jabber in the long since repetitive and banal debate Denbeaux carried on for the defense.

## 2008

56. *American General Life and Accident Insurance Co. v Ward, et al.*, 530 F.Supp.2d 1306 (US DC ND GA 2008)

At page 1315: “Assuming [Marcus] Pittman has been found competent to testify by various Georgia courts, he still does not meet the requirements of Rule 702. Accordingly, he cannot testify as an expert in this case. The Court thus GRANTS plaintiff’s motion to strike Pittman’s report and DENIES defendants’ motions to supplement their response and counterclaims with a reference to Pittman’s report.”

COMMENTARY: This case is another well wrought guide on how to make every relevant mistake under applicable Federal rules as a proffered handwriting expert in composing a pre-trial report. One trusts Mr. Pittman needed this once only experience to learn his multiple lessons.

57. *Frey v Mykulak*, Civil Action No. 06-CV-5370 (DMC). (US DC D NJ 2008)

Robert I. Lewis, D.O., was offered by plaintiff to offer what the court found would be non expert, non scientific testimony regarding handwriting. Defense motion to exclude Lewis was granted.

COMMENTARY: Another instance when a *Daubert* hearing serves everyone quite well, especially the long-suffering jurors who would now suffer less.

58. *Nord Service, Inc., v Palter*, 548 F. Supp. 2d 366 (US Dist. Ct. ED TX 2008)

Erich Speckin testified for Nord Service that signatures on certain documents were copied from other specific documents. He also testified to other evidence of false documents. The court denied a motion to strike his testimony because he had examined copies. The motion was based on *United States v Garza*, 448 F.3d 294 (5th Cir.2006), which held that “the lower court did not abuse its discretion when it excluded Garza’s forensic document examiner under Rule 702, as the expert based her opinions upon an examination of photocopied documents. Id. at 300. Garza’s expert planned to testify that the witness signatures on Garza’s confessions were forgeries. Id. at 299. The expert’s opinion was based upon examination of six photocopied documents, four of which the expert knew the witness had signed and two of which Garza alleged were forgeries.”

COMMENTARY: *U.S. v Garza* is discussed in this text. Reviewing it will show the summary in *Nord Service, Inc., v Palter* might give the wrong impression of the situation. However, this is not reprehensible since *Nord* is concerned with only one issue, whether use of copies will alone make handwriting expert testimony unreliable. The answer is no.

///////

59. *Ragone v Atlantic Video*, No. 07 Civ. 6084 (JGK). (US Dist. Ct. SD NY 2008)

The report only says that Peter Tytell, a handwriting expert, testified.

COMMENTARY: A case of routine admissibility.

60. *Standard Ins. Co. v Burch, et al.*, 540 F. Supp. 2d 98 (US Dist. Ct. DC 2008)

Document examiner John Hargett testified.

COMMENTARY: A case of routine admissibility that offers extremely scant information on Hargett's contributions to the case.

61. *U.S. v Yass and Blechman*, No. 08-40008-JAR. (US D.C. D KS 2008)

In an *in limine* hearing Debra Campbell was found fully qualified and reliable as a handwriting expert.

"Defendant also relies on the report of Mark Denbeaux, a law professor at Seton Hall, who has spent years trying to convince the federal courts that handwriting analysis is not a proper subject for expert testimony.[10]

"The government responds that Blechman is asking this Court to do what no federal appellate court to address the issue has done—find that handwriting comparison testimony is per se unreliable and therefore inadmissible. The Court has reviewed the decisions of the federal appellate courts, including an unpublished Tenth Circuit opinion, which have been unanimous in approving expert testimony in the field of handwriting analysis.[11] Rather than to exclude handwriting analysis as 'junk science,' as urged by defendant, the Court finds the process of handwriting analysis sufficiently reliable to satisfy Daubert and the Federal Rules of Evidence and declines to depart from the clear majority of courts weighing in on the issue. Moreover, despite the uneven treatment of handwriting experts by district courts, every appellate court to have considered the issue of handwriting testimony has held that the expert's ultimate opinion was admissible.[12] Accordingly, defendant's motion is denied. The Court likewise finds that a hearing on this matter is unnecessary until trial, when Ms. Campbell is available and the task before this Court will be to fulfill the rest of its gatekeeping role, if needed.[13]

"IT IS THEREFORE ORDERED BY THE COURT that defendant's Motion to Exclude Testimony of Forensic Document Examiner (Doc. 52) is DENIED."

I replicate all the relevant footnotes to assist the reader in beginning research into the issue:

"[9] See, e.g., *United States v. Hidalgo*, 229 F. Supp. 2d 961 (D. Ariz. 2002) (permitting testimony from handwriting analyst, but disallowing analyst from testifying about authorship); *United States v. Saelee*, 162 F. Supp. 2d 1097, 1102-03 (D. Alaska 2001) (disallowing testimony from handwriting examiner).

"[10] (Doc. 54.) Given the alleged inadequacy and conclusive nature of the government expert's report, Denbeaux focused his report on his criticisms of handwriting analysis in general.

"[11] See *United States v. Mornan*, 413 F.3d 372, 380 (3d Cir. 2005) (explaining that '[t]his Court has previously held that handwriting analysis in general is sufficiently technical in nature to be the subject of expert testimony under Rule 702 and the standard articulated by the Supreme Court in Daubert[.]'); *United States v. Crisp*, 324 F.3d 261, 269-70 (4th Cir. 2003) (rejecting defendant's challenge that the reliability of handwriting analysis testimony was insufficient to satisfy Daubert); *United States v. Mooney*, 315 F.3d 54, 63 (1st Cir. 2002) (rejecting argument

‘that the field of handwriting analysis lacks sufficient standards and testing to verify that analysts can accurately and definitively identify the author of a questioned document’); *United States v. Jolivet*, 224 F.3d 902, 906 (8th Cir. 2000) (expert allowed to offer opinion that the signatory on the questioned documents was likely defendant); *United States v. Paul*, 175 F.3d 906, 909-11 (11th Cir. 1999) (holding that district court did not abuse its discretion in permitting expert testimony as to authorship); *United States v. Jones*, 107 F.3d 1147, 1160-61 (6th Cir. 1997) (handwriting expert was allowed to testify that the signatures on documents in question were defendant’s); *United States v. Velasquez*, 64 F.3d 844, 848-50 (3d Cir. 1995) (government’s expert allowed to testify as to the authors of documents, but holding trial court erred by [not] allowing defendant’s expert, Professor Denbeaux, to testify regarding criticism of standards in handwriting analysis field); *United States v. Hernandez*, 42 F. App’x 173 (10th Cir. 2002) (unpublished in Federal Reporter; expert allowed to testify as to the similarities between writing on questioned documents and defendant’s known exemplars, noting that the exclusion of the expert’s ultimate opinion was not before the Court).

“[12] See *United States v. Prime*, 431 F.3d 1147, 1154 (9th Cir. 2005) (permitting ultimate opinion that the defendant authored the note in question); *Crisp*, 324 F.3d at 269-70 (allowing ultimate opinion that defendant authored the note); *Mooney*, 315 F.3d at 63 (same); *Jolivet*, 224 F.3d at 906 (allowing opinion that it was ‘likely’ that the document contained the defendant’s handwriting); *Paul*, 175 F.3d at 911 (permitting expert testimony that the defendant wrote the extortion note); *Jones*, 107 F.3d at 1161 (allowing testimony that signatures on various documents were the defendant’s).

“[13] See *United States v. Ellis*, 193 F. App’x 773, 777-78 (10th Cir. 2006).”

COMMENTARY: The court states well and at length its reasons for denying defense motion to exclude Campbell’s testimony. Nevertheless, I would not underestimate the anti-expert experts’ ability to find something ambiguous in this and the many other similar rulings.

62. *U.S. v Yono*, Case No. 06-20479. United States District Court, E.D. Michigan, Southern Division. December 4, 2008.

“In his motion, Defendant states that ‘his right to a fair trial was prejudiced by the admission of alleged “expert” opinion testimony, which allowed the government, on the eve of trial, to unfairly bolster eye witness testimony.’ (Def.’s Mot. ¶¶ 4.) Defendant’s assertion relates to the testimony of Richard Dusak regarding his opinion about signatures on various documents related to the case. Defendant received Dusak’s report on June 19, 2008. The next day Defendant filed a motion to exclude Dusak’s testimony or, in the alternative, for a Daubert hearing and the government responded. Trial began June 23, 2008. This Court held a Daubert hearing on the morning of June 25, 2008, and thereafter denied Defendant’s motion to exclude Dusak’s testimony. Dusak testified later that day.

“Defendant again fails to present any factual support or argument to establish that Dusak’s testimony was erroneously admitted.”

COMMENTARY: At least the complaint about the handwriting evidence was a new one, although a bit far out.

63. *Forsberg v Pefanis*, Civil Action No. 1:07-cv-03116-JOF-RGV. (US Dist. Ct. ND GA 2009)

It is well worthwhile to read the description of the testimony of the three document examiners, Farrell C. Shiver for plaintiff and both Teresa DeBerry and Steven Drexler for defendant. For present purposes the court's rather lengthy summation of its findings will suffice:

"Based on the evidence before it, the court concludes that the signature on the Popke Statement is not Mr. Popke's. Plaintiff's highly qualified expert testified that the signature on the Popke Statement contained numerous significant differences from the known signatures of Mr. Popke. Mr. Shiver opined based on his analysis that it was 'highly probable' the signature was forged. Mr. Shiver stated his conclusion would have been of the highest level of certainty, but for the fact that he did not have an original of the Popke Statement to consider. As the Popke Statement was produced by Defendants, the fact that the original is no longer available weighs against Defendants. The court finds Mr. Shiver to be well-qualified....

"In contrast, Defendants' first expert claims that the signature on the Popke Statement is 'disguised' because of certain 'habits' that she discerned from the known signatures of Mr. Popke. However, these supposed 'habits' are features of the writing that are equally present and not present. Therefore, they cannot be 'habits' at all and certainly cannot be habits which would support a finding that the same person had formed the signatures. The court also notes that the testimony and qualifications of Defendants' first expert witness were largely discredited on cross-examination.<sup>1]</sup>

"The best Defendants' second expert could opine was that his analysis was 'inconclusive' as to whether Mr. Popke had signed the Popke Statement. Defendants' second expert also testified that the first part of the signature contains pen pressure points indicating the signature was carefully done. This opinion directly contradicts the testimony of Mr. Anderson and Mr. Pefanis that Mr. Popke signed the statement in a 'rushed' fashion. Mr. Anderson's testimony is further called into question by the fact that he claims he did not tell anyone at the company that he was going to purchase a Lexus, yet he had possession of Mr. Pefanis' Porsche to use for trade-in at the time of purchase — a fact which presumably indicates that Mr. Anderson had at least spoken with Mr. Pefanis about getting a new car.

"Mr. Popke, himself, has testified that he did not sign the document in question and that Mr. Pefanis and Mr. Bonertz had pressured him to sign the document even to the point of threatening his continued employment. Defendants have proffered no reason as to why Mr. Popke would be untruthful on this matter. Again, Defendants' refusal to depose Mr. Popke also provides the court with some inference of what Defendants believe his testimony would be. Further, the veracity of Mr. Popke's declarations is bolstered by the strength of Mr. Shiver's testimony that the signature on the Popke Statement is not Mr. Popke's.

"Finally, it has not escaped the court's attention that Mr. Bonertz declined to testify at the hearing, despite the fact that Defendants' pleadings had relied on his proffered testimony that he had witnessed Mr. Popke sign the statement and he was announced as a witness at the hearing.

"Having concluded that Mr. Popke's signature on the Popke Statement is a forgery, the court next turns to consideration of the appropriate sanction."

The sanction requested by plaintiff was imposed.



COMMENTARY: As hard as the experience seems to have been for Ms. DeBerry, the report gives ample evidence of potential for excellence. Here is a list of some but not all of the lessons the case gifts to Ms. DeBerry, and to the rest of us as well, which once learned will give her a successful career:

- a) Strengthen qualifications till the day one retires or dies, particularly broaden the sources and content of one's education;
- b) Aspire to be certified by an organization that does not essentially sell credentials or hand them out upon a pretense of proper merit;
- c) Use terminology properly, for example knowing that a habit, not surprisingly, must be proven to be habitual;
- d) Find a mentor kind of heart but merciless in teaching proper methods of testifying and of handling attack questions; and
- e) Be more hypercritical of one's own performance than the opposition is so that one will be blessed with ever more lessons to learn. If we are not blessed with lessons to learn and demanding teachers to teach them, we will never be blessed with learning. If we cannot find a demanding teacher, we must be more demanding on ourselves to study than others ever are.

A final observation. Ms. DeBerry dodged the proverbial bullet by virtue of the judge's more than proverbial sense of fairness. Footnote one reads: "The court rejected Plaintiff's motion to strike Ms. DeBerry's testimony for lack of qualification. Although the court recognized that Ms. DeBerry did not have any formal education, the court noted that she had an understanding of the process beyond that which a lay person would."

64. *Guthartz v Park Centre West Corp.*, Case No. 07-80334-CIV-MARRA/JOHNSON. (US Dist. Court, SD FL 2009)

Document examiner Frank Norwitch testified to signatures on stock powers.

COMMENTARY: A case of routine admissibility.

65. *Harding v Naseman*, No. 07 Cv. 8767 (RPP). (US Dist. Ct. SD NY 2009)

Harding, former wife of Naseman, claimed he had presented a fraudulent tax return in their settlement discussion, making a four-million dollar difference. Gus Lesnevich testified for plaintiff and Erich J. Speckin for defendant. Lesnevich said the same person made all handwritten entries on both returns, while Speckin said numbers in the fraudulent return had been traced from the genuine one. Because Lesnevich had longer years in practice and spoke with more assurance, the court credited his testimony.

COMMENTARY: A case of routine admissibility and routine lack of logic that longer years of practice make for greater reliability in an expert witness. Thus a bungler or hireling need only survive long enough to be ever more considered not a bungler but more highly credible.

66. *Smith v McDaniel, et al.*, No. 3:06-cv-00087-ECR-VPC. United States District Court, D. Nevada. July 10, 2009.

"According to the testimony of the State's forensic handwriting expert, block printing commonly was used to disguise the writer's handwriting. The block printing on the note also had a tremor in it, which also possibly may have reflected an effort to disguise the writer's

handwriting, among other potential causes. The examiner was unable to identify the block print as a specific individual's writing based upon the non-block writing samples that he was provided. His findings thus were inconclusive, without including or excluding any individual."

COMMENTARY: According to Footnote 55 it seems that the expert's name is Whiting.

67. *US v Khellil*, 678 F. Supp. 2d 713 (US Dist. Ct. ND IL 2009)

This decision gives one of the most extensive discussions of document examination testimony and its legal aspects than most any I have seen. One needs to read the case report to follow all the ins and outs of it. In brief, here are what I think are the major issues addressed.

After the prosecution rested, defense counsel wanted to call Bonnie Schwid, a forensic document examiner, as a defense witness. Upon objection, testimony was limited to Social Security documents since that was all that was disclosed prior to trial. In order to have Schwid testify to other issues on rebuttal, defense counsel called a prosecution expert, Joan DiMartino. Contrary to defense counsel's ill-laid plans, DiMartino testified to defendant's disguise of his exemplars and much else not helpful to the defense. Further, rule prevented rebuttal of testimony the prosecutor did not elicit but only defense counsel, so that Schwid still could not offer rebuttal testimony, also since it would be "an end run" around the Court's ruling on the matter.

Several times the Court had to call attention to defense counsel's poor performance in order to protect defendant's right to a fair trial, but always out of hearing of the jury and out of defendant's hearing except on one occasion. For post-trial motions, the Court made a Federal Defender Panel attorney available to offer defendant legal counsel if he so chose.

Defense trial counsel made post trial motions then withdrew, and substitute counsel made post trial motions for defendant, including the inadequacy of trial counsel. The Court granted acquittal because the government failed to prove statements supporting both counts false and also, if the statements were indeed false, the government failed to prove their materiality to the counts charged. Defendant still faced the possibility of prosecution as proceedings on his application for permanent residence were pursued and completed.

COMMENTARY: I imagine Ms. Schwid, a member of AFDE, still cringes from the sabotage by defense counsel of all that she could have testified to. It is the kind of thing that in a future case an unscrupulous opposing counsel might misrepresent repeatedly as her inadequacy.

68. *U.S. v Taylor*, 704 F.Supp.2d 1192 (US DC D NM 2009/2010)

COMMENTARY: Titled "Memorandum Opinion and Order Granting United States' Motion to Exclude Expert Testimony of Adina Schwartz," I include this as a guide on challenging anti-expert experts who are mere critics of experts in a field they themselves admittedly are entirely incompetent in, although the expertise in this case was firearms investigations. The case report discusses and relies on handwriting cases where critics of the expertise were both admitted and found unqualified. Dr. Schwartz was an academic who in the past had misrepresented what publications said or meant. The trial court also said it was a matter, not of a difference in opinion, but a difference in the kind of expert.

I believe the anti-expert experts who attack handwriting identification misrepresent in a similar way what history and case reports say, and they lack correct understanding of the fundamentals of handwriting identification, even of identification itself, and of the law on

admissibility of expert testimony. As proffered expert witnesses they could never satisfy what they falsely contend, are the essential requirements for reliability of expert testimony.

## 2010

69. *DAG Jewish Directories, Inc. v Y & R Media, LLC*, No. 09 Civ. 7802 (RJH). (US Dist. Ct. SD NY 2010)

Quoted at length is one of the Court's summaries of the document examination issue: "Plaintiff contends that the testimony of its document examiner, John F. Breslin, 'supports that the Dapey Assaf signature line was present at the time of the presentation.' (Atzmon/Cohen Mem. 18.) It does not. Mr. Breslin only found, on the basis of 'trash marks' common to each document, that the forged 31200 contract and several real Y&R contracts were from the 'same common source.' (Breslin Decl. at ¶¶ 20.) However defendants concede that their contracts were all from the same source, Donovan for Printing. As even plaintiff admits, 'Y&R's [sic] must have given Donovan for Printing a DAG contract, and instructed them to reproduce it almost exactly.' (Atzmon/Cohen Mem. 24.) The forgery occurred thereafter, when plaintiff acquired one of the resultant Y&R contracts, altered it to add a Dapey Assaf line, and then submitted it to the Court as if it had acquired it in that form. The trash marks would have been copied in that forgery along with the rest of the document. To put it another way: if the source generated the real Y&R contract, and the real contract was used to create the forgery, then both the forgery and the real Y&R contract would be descended from the same original source. Mr. Breslin's finding that the Y&R contracts are from the same common source is therefore unremarkable, and does not refute defendants' version of events.

"In light of the overwhelming objective evidence demonstrating a forgery, plaintiff's assertions that the 'Dapey Assaf' signature line on Hearing Exhibit 2 is not a forgery cannot be believed. Moreover, it could not have been accidental: a forgery of this nature could only result from intentional bad faith."

COMMENTARY: Plaintiff's own expert showed expertise and integrity in setting forth the physical facts as he found them. He was certainly helpful to the Court. There were other fraudulent practices by plaintiff, such that the Court dismissed the complaint with prejudice and awarded attorney fees involved in responding to the forged evidential document. Please note neither party was a Jewish religious entity or related to one, but both were commercial entities.

70. *U.S. v Brooks and Hatfield*, No. 06-CR-550(S-1)(JS). United States District Court, E.D. New York. January 11, 2010.

Defense motion to preclude testimony of John Paul Osborn was denied.

COMMENTARY: A case of routine admissibility after a motion to the contrary.

71. *U.S. v Solomon, Elder and Johnson*, Case No. 08-00026-03/05-CR-W-FJG. United States District Court, W.D. Missouri, Western Division. June 14, 2010.

Motion to exclude testimony of Donald Lock denied since "Defendant's objections go to the weight, not admissibility, of the evidence."

COMMENTARY: A routine case of admissibility via the long route of a hearing.

72. *American Family Life Assurance Company of Columbus v Biles, et al.*, Civil Action No. 3:10CV667TSL-FKB. (US Dist. Ct. S.D. MS 2011)

The report begins: "In its September 8, 2011 memorandum opinion and order in this cause, this court denied motions by defendants to dismiss, for Rule 56(f) discovery, and for leave to file a counterclaim and third-party complaint, and the court denied a motion by defendant Michael Lockwood to dismiss. The court reserved ruling on the motion by plaintiff American Family Life Assurance Corporation (AFLAC) for summary judgment and on AFLAC's motion to strike the affidavits of defendants' handwriting expert, Robert Foley, pending a Daubert hearing. Subsequent to entry of the court's opinion, defendants moved for reconsideration, and they separately moved to strike the affidavit and exclude the testimony of AFLAC's expert forensic document examiner William Flynn, and for a Daubert hearing on the admissibility of Flynn's opinions. On October 28, the court conducted a Daubert hearing on each side's challenge to the other's expert's opinion. Having now considered the memoranda of authorities and accompanying attachments submitted in support of the motions to strike and/or exclude, along with the testimony at the Daubert hearing, the court concludes that defendants' motion to strike Mr. Flynn's affidavit and exclude his opinions is not well taken and should be denied, and that the opinions expressed in Mr. Foley's affidavits are not reliable and should be stricken."

Among other factors considered was that Flynn had the original data from the electronic signature in question to work with while Foley did not. However, lest anyone think the decision was critical of Foley, Footnote 3 reads: "The court reiterates that Mr. Foley is obviously highly qualified in his field, and would further note that it appreciates his forthrightness in his testimony before the court."

COMMENTARY: This case is an object lesson to all handwriting experts either to learn thoroughly modern methods of capturing handwritten items or to decline to address them. On the other hand, I believe this case shows the inadequacy of the explanations of and bases for the ASTM terminology for expressing levels of opinion in document examination. Foley explained that "probably" meant "possibly" and that he wanted more and better materials. Specifically he dissociated the term "probable" from the meaning of "more likely than not." Logically, his opinion became a non-opinion, not merely a qualified one.

73. *Beckett v Kyler, et al.*, Civil No. 1:CV-03-1716. (US Dist. Ct. MD PA 2011)

Beckett filed a motion for extraordinary relief and for a certificate of appealability that had been denied previously. He claimed a letter showing a witness against him had a deal with the D.A. had been kept from him by the prosecutor. However, the letter needed authentication so Beckett asked for a document examiner. The court appointed Hartford Kittel who said the letter was not authentic. Beckett asked time to find another expert, and he found Carolyn Kurtz who agreed with Kittel. Beckett then asked time to find a third expert, but time ran out on him to do so. The case report ends:

"In accordance with the accompanying memorandum, IT IS HEREBY ORDERED THAT the motion for extraordinary relief (doc. 106) is dismissed. This court continues to decline to issue a certificate of appealability."

COMMENTARY: Although no expert testimony was had, I include this case report because it shows how difficult it can be to find a hireling among handwriting experts. I submit that one needs lots of time, lots of money and a good idea where to ask first. I was told that one training course tells students always to agree with the client, no matter what, an instruction I never came across otherwise, but I have it only on hearsay. Ms. Kurtz is a member of NADE.

74. *Boomj.com, et al., v Pursglove, et al.*, Case No. 2:08-CV-00496-KJD-RJJ. (US DC D NV 2011)

Drew Max, proffered by defendants as a handwriting expert, was ruled fully qualified and reliable after an *in limine* challenge. His report fully satisfied the requirements of Rule 26(a)(B)(2).

COMMENTARY: The challenges offered were proper fodder for cross-examination at trial. It is suggested that an expert's report explicitly state how it is satisfying each requirement of law or rule. To do so, the expert must study what applicable guides in law or rule state and must keep abreast of any changes. This is only one instance of the deplorable malservice offered to document examiners by those insisting self-study is inadequate, while it is far more essential than any original study under even the most awesome of teachers. Since knowledge and technology in any living field of endeavor continually grow, anything less than continual self-study will only assure an ever growing ignorance and foolishness.

75. *Diggs v Burge*, No. 07-CV-6240(VEB). (US Dist. Ct. WD NY 2011)

This was a hearing for a petition of *habeas corpus* which was denied. In the underlying criminal trial, James Beikirch of the Monroe County Sheriff's Office had testified that Diggs's handwriting was not on a store receipt offered to support an alibi.

COMMENTARY: A case of routine admissibility. Beikirch is a member of NADE.

76. *U.S. v Tarantino*, No. 08-CR-655 (JS). United States District Court, E.D. New York. March 23, 2011.

Reviewing the evidence and law submitted in the defense's *Daubert* motion to preclude the Government's handwriting expert, the court stated: "Accordingly, the Defendant's request to preclude the Government's handwriting expert is denied, subject to further voir dire at trial of the expert's qualifications and methodologies."

COMMENTARY: A case of routine admissibility after a routine challenge, and rapidly becoming as routinely unimaginative as it is repetitive. If defense attorneys and their advisers would either learn what the expertise is about and should be about or consult with a genuine handwriting expert, they might garner a modest measure of success and save taxpayers significant costs in doing so.

## 2012

77. *Brown v Jones*, Case No. 08-CV-648-GKF-TLW. (US Dist. Ct. ND OK 2012)

In a petition by Brown for *habeas corpus*, the court reviewed the evidence at his trial which included handwriting identification: "They heard the document examiner for the Tulsa Police

Department testify that it was highly probable that the author of the note used to effect the bank robbery was the writer of the known writing sample. *Id.* at 242. The known writing sample was Petitioner's job application."

COMMENTARY: A case of routine admissibility.

78. *Primerica Life Insurance Company v Atkinson, et al.*, Case No. 11-cv-05299-RBL. (DC WD WA 2012)

Primerica had James Green as handwriting expert, who said defendant's experts were unqualified. Defendants had Wendy Carlson and Curtis Baggett. *Brown v Primerica*, which is discussed herein, also had Baggett as Primerica's opposing handwriting expert. The issue was whether there was a triable issue regarding forgery of signatures on an insurance policy. The court resolved the matter by stating:

"Next, Allred argues that Baggett's Letter of Opinion should be excluded because it is based on insufficient data, fails to identify any process or methodology utilized to reach the conclusion, and fails to provide any reasoning for concluding that Allred forged the signature. Atkinson responds by defending Baggett's credentials and methodology. As Carlson's testimony is enough to survive summary judgment, the Court does not need to determine the admissibility of Baggett's testimony. To the extent that his Letter of Opinion is his ultimate testimony, it is nothing more than ipse dixit—an assertion without proof. Assuming that Baggett is a qualified expert and uses reliable methodology, his Letter of Opinion provides no facts, reasoning, or analysis. He states, 'Carolyn Allred did indeed forge the signature of Christopher Ryan and authored the handwriting on the questioned documents.' But he does not offer any basis for arriving at that conclusion."

The court pointedly rejects one argument often used to "prove" that some handwriting experts are unqualified: "Allred points to Carlson's lack of membership in the American Board of Forensic Document Examiners (ABFDE) and to the 'questionable qualifications' of Baggett.

"As Atkinson argues, the ABFDE does not have a monopoly on who can and cannot be an expert in federal court. Under Rule 702, an expert can qualify through either knowledge, skill, experience, training, or education."

COMMENTARY: Carlson was one of Baggett's students. One of her qualifying experiences was that she had given a talk at a high school.

79. *Salazar v A&J Construction of Montana, Inc.*, No. CV 11-16-BLG-CSO. (US DC D. MT 2012)

Motion to strike report and testimony of Salazar's handwriting expert, Wendy Carlson, was denied since the report's deficiency and disclosure were corrected and completed in time.

COMMENTARY: Either Carlson did not know what the rules required of her or she was improperly instructed. In response to the motion to exclude, all deficiencies were sufficiently repaired.

80. *Santiago v Evans, et al.*, Case No. 6:12-cv-577-Orl-22DAB. (US D.C. MD FL 2012)

By a signed agreement defendants purchased a boat from plaintiff and sold it to a third party. Plaintiff testified he did not sign the agreement, which the court found not credible. Thomas

Vastrick, certified by ABFDE, testified that plaintiff had signed the agreement. Based on law, the court found the agreement void and that plaintiff still owned the boat.

COMMENTARY: It seems defendants won everything but the boat.

81. *U.S. v Durante*, Criminal Action No. 11-277 (SRC) (United States District Court, D. New Jersey, April 12, 2012)

Motion to exclude handwriting expert, John Sang, is denied without prejudice.

COMMENTARY: In a brief and well written decision the trial court explained why a hearing on the motion was not required:

“Defendant contends that John Sang should be precluded from testifying at trial as a handwriting expert on Daubert grounds. This Court agrees with Defendant to the limited extent that Federal Rule of Evidence 702 requires the Court to act as gatekeeper and determine whether an expert’s testimony may be admitted. Defendant points to no authority for the proposition, however, that either Daubert or Rule 702 require a pretrial hearing to make this determination. To the contrary, as the Second Circuit has observed, ‘[w]hile the gatekeeping function requires the district court to ascertain the reliability of [the expert’s] methodology, it does not necessarily require that a separate hearing be held in order to do so.’ *United States v. Williams*, 506 F.3d 151, 161 (2d Cir. 2007).”

The *Kumho* case is quoted in support, and a Ninth Circuit case is cited to the effect that a special hearing need not be held. *United States v. Alatorre*, 222 F.3d 1098, 1102 (9th Cir. Cal. 2000). Lest we handwriting experts become complacent, the court then says:

“On the other hand, this Court does not agree with the Government’s suggestion that the field of forensic handwriting analysis is so well-established that no Rule 702 inquiry into reliability is necessary. This Court exercises its discretion under the Federal Rules of Evidence and *Kumho* and will fulfill its gatekeeping obligations and consider any challenges to the admissibility of John Sang’s expert testimony at trial.”

82. *U.S. v Revels*, No. 1:10-CR-110-1. (United States District Court, E.D. Tennessee, Chattanooga Division. May 9, 2012.)

Curtis Baggett was disqualified from testifying at sentencing hearing on behalf of defendant. This seems to be the most thorough of the court critiques of his qualifications and lack of truthfulness in testimony.

Defendant was not permitted continuance to retain Grant Sperry or Tom Vastrick, since there had been sufficient time to explore Baggett’s questionable qualifications and there had already been a continuance.

COMMENTARY: The court expressed its concerns with the benefit to defendant and, in what must have been a display of a dry sense of humor, included an understated estimate of Sperry’s qualifications over Baggett’s:

“The Court is also concerned with the degree to which Mr. Sperry’s testimony will be favorable to Defendant. Defendant has worked quickly over the past few weeks to obtain a report from Mr. Sperry for the Court to consider in conjunction with the pending motions, and Mr. Sperry’s qualifications do appear to far exceed those of Mr. Baggett. The Court also recognizes that Defendant has raised a novel argument regarding whether Defendant penned the electronic

signatures at issue and no other opinion testimony has been offered in support of this theory. With that said, it is less than clear that Mr. Sperry's testimony will be favorable to Defendant, which is a primary consideration for the Court in determining whether or not a continuance should be granted."

83. *U.S. v Rogers*, Case No. 11-20749. (US Dist.Ct. E.D. Michigan 2012.)

Defendant made motion *in limine* to exclude handwriting, fingerprint and mortgage fraud expert testimony. The Government replied that it would call no expert but rely on testimony of FBI agents regarding their investigations. Motion denied as moot.

COMMENTARY: I include this case as typical of all cases where one side made a motion to exclude the opposing expert(s), and the opposing side responded with intention to call none. In any particular case, did they never intend offering an expert or did they back down in face of an intimidating challenge? Someone far wiser and knowledgeable than I would have to answer that; so in the mealtime list such cases in your preferred column.

84. *U.S. v Sadler, et. al.*, Case No. 1:10-CR-098. (U.S. DC S.D. OH 2012)

Nancy and Lester were on trial together for drug violations. Presumably they were husband and wife though the case report does not tell us. Nancy is the main focus of this decision regarding their post-conviction motion for acquittal.

"She cites the testimony of her handwriting analyst, David Hall, who opined that some documents sent to GIV were written by Gidget Coleman, not by Nancy Sadler. And she relies on bank records introduced at trial, showing that she was at an Indiana casino on many of the dates that drug orders were placed, making it impossible for her to have physically signed or approved orders on those dates."

COMMENTARY: This case of routine admissibility sets forth reasoning by the trial court why the handwriting expert's testimony does not prove some contentions by defendants. However, the expert must have done well since, out of 29 counts, they were acquitted in counts 3-26 "each of which alleged distribution of controlled substances on specific dates...."

## B. FEDERAL TRIAL COURTS OTHER THAN DISTRICT COURTS.

1994

85. *Bybee v Commissioner of Internal Revenue*, 72 TCM 607 (CCH 1996); on remand from 29 F.3d 630 (9 Cir 1994)

Tax Court found, regarding signatures on Form 872 which Petitioners denied, that they "completely failed to satisfy their burden to prove that the signatures...[were] forgeries." Court said they appeared "to be identical" to signatures on their joint tax returns. There is no statement that expert testimony was offered.

COMMENTARY: One source indicated a handwriting expert was admitted in this case, but case reports I have seen so far do not indicate this.



## 1997

86. *In re Apex Intern. Management Services, Inc.*, 215 BR 245 (Bankr. Ct. MD FL 1997)

Fred E. Johns, as the debtor corporation's former president, moved for relief from a settlement agreement. Among the evidence he presented was the following at page 248:

"19. Testimony was also given by Don O. Quinn, a forensic document examiner. Mr. Quinn testified that the 'Fred E. Johns' signature on the December Agreement was not originally written on that document, but is a photocopy from the same original source as Mr. Johns' signature on the September Agreement. (Feb. 27, 1997 Tr. at 53.) Mr. Quinn further testified that he believes slipsheeting occurred in this case. Id. at 54."

Johns' motion was denied because of his own delay in pursuing it and because earlier he had had his attorney argue for acceptance of the December Agreement.

COMMENTARY: Sometimes, even in a court of law, one cannot have it both ways.

## 2002

87. *In re Sorrell; Sorrell v Electronic Payment Systems, Inc.*, 292 BR 276 (Bankr. Ct. ED TX 2002)

"The Sorrells testified that they believe the initials and signatures of the November 3, 1995 documents to have been forged manually or by means of an electronic copier. Their opinion is that page four of the Deed of Trust executed on October 18, 1995 was removed and used to create the false signatures on the November 3, 1995 documents. There is no evidence that such replacement occurred beyond their speculation and the missing page. Defendant, of course, denies that the November 3, 1995 documents were forged. At trial, Linda James, a board certified document examiner was called as an expert witness to discuss whether the signatures were authentic and the issue of whether the signature of Elbert Dixon, which appears on a Warranty Deed, also apparently executed on November 3, 1995, granting Avery Sorrell and Vergie Sorrell the homestead property known as 1019 S. Holly, Sherman, Texas, was an authentic signature. Plaintiff's Exhibit 23. Defendant's D-O. Ms. James testified at length and in great detail regarding her methods and her conclusions in assessing the veracity of signatures on questioned documents, matching known, verified signatures against contested signatures. James testified that the signatures on the November 3, 1995 documents were the Sorrells'. However, the Court was unable to give her testimony sufficient credence to meet the threshold of persuasion when such testimony was juxtaposed to Avery Sorrell's testimony, Elbert Dixon's testimony and certain elements of Vergie Sorrell's testimony. James' expert testimony dwelled in great detail on the methodology used in authenticating signatures. She explained in detail the points of the signature that she considered the tell-tale markings that would always appear in an authentic signature but that could not be duplicated in an attempted forgery. She testified that all signatures contained these tell-tale markings and that it was simply a matter of determining the basic characteristics of a signature and checking for those basic characteristics in the signature to be authenticated. The problem with her expert testimony was that when it came to applying those tell-tale markings to the actual signatures in question she failed to explain where they were and how the markings on the questioned signature matched the known samples of the Sorrell's signatures. She did not

demonstrate the similarities to the Court but simply offered the conclusion that the signatures on the document dated November 3, 1995 were authentic.[7] The Court finds that the evidence supports Debtors' version of the events: the documents dated November 3, 1995 are falsified."

COMMENTARY: Yes, the quote appears as one paragraph in the source I used. I reproduce the extended discussion of James' testimony to make one key observation. Given the detailed description she gave of her methodology, one is hard put to entertain a reasonable probability that she did not employ it and observe all that she described as to be observed and not make notes of it all. I infer from this that the attorney conducting the direct examination cut it short and so cut the legs off his own case. Unfortunately, it is always the witness that looks bad in a summary discussion of the testimony. In this light, I recognize I might have been a bit too harsh in this collection when discussing some testimony. If anyone offers demonstrated correction, I will gladly make corrections in future editions.

### 2003

88. *In re Santaella*, 298 BR 793 (Bankr. Ct. SD FL 2003)

At page 797: "2. Linda Hart — Ms. Hart, a forensic document examiner, offered expert testimony that the purported signatures of 'Hans Bauer' and 'Jan De Vries' on the documents that she reviewed (except for the 'Hans Bauer' and 'Jan De Vries' declarations) were written by the Debtor. She testified that she reached this conclusion with 'the highest level of certainty.' May 8, 2002, Transcript at page 79 (hereafter 'Tr. at \_\_\_\_'). She also testified that the purported signatures of 'Hans Bauer' and 'Jan De Vries' on the three notarized declarations were actually what the experts call 'drawings' made by someone attempting to simulate the Debtor's 'Hans Bauer' and 'Jan De Vries' signatures."

COMMENTARY: A case of routine admissibility.

### 2004

89. *In re Mary Jo Townsend, Debtor; Townsend v Morequity, Inc.*, 309 B.R. 179 (US Bankruptcy Ct. W.D. PA 2004)

Thelma Greco was handwriting expert for debtor/plaintiff to prove debtor's signature on a mortgage had been forged by her husband. J. Wright Leonard was handwriting expert for defendant and testified that the mortgage signature was genuine. Morequity moved that Greco's testimony be stricken under *Daubert*, the motion was granted, and Debtor's signature on the mortgage was found by the Court to be genuine.

Greco had completed Andrew Bradley's basic course, but the Court found that only certified her as having the foundation to become qualified. She was a member of National Association of Document Examiners, had not completed a course offered through NADE and was not a candidate for board certification by NADE. Leonard, on the contrary, was board certified by NADE and sat on its Board of Directors. Greco used a "cross check" system which was not peer reviewed nor generally accepted in the field, while Leonard testified she had never heard of "cross check" until she read Greco's report. Greco was found unqualified, her methodology not meeting *Daubert* and other relevant criteria, and her testimony was stricken. Leonard was found

credible and her opinion supported by non-expert evidence.

COMMENTARY: Greco had not done her homework nor showed familiarity with things of common knowledge among document examiners, such as pertinent ASTM standards. To Leonard's credit, comments attributed to her regarding Greco's work were all objective and technical. I do not know of any course of study offered by or through NADE. The organization does provide its members with data on current courses, conferences and other educational events offered by any other organization. It has never officially endorsed or criticized any of these things. Its certification testing is entirely objective, measuring the candidates' competence and knowledge without any prior or prejudicial requirement that such competence or knowledge be acquired in any particular way or with any particular organization.

The system used by Greco is probably that described in Doris M. Williamson's and Antoinette E. Meenach's book, *Cross-check system for forgery and questioned document examination*, Chicago, Nelson-Hall, 1981. The text has some good ideas, which would be found in any standard, recognized text. But the system itself is, in my opinion, highly flawed. A document examiner would want to collect such texts in order to reply knowledgeably and objectively to one employing such creative, but out of the mainstream and unreliable, methods. Other authors have made up their own unique theories and methods along with a peculiar terminology one would not recognize from standard usage by the recognized authorities. The authors of such systems could, I suggest, be drastically impeached from their own creations, but an attorney would have to consult an expert who has an extensive collection of both standard and non-standard texts and who has previously studied them. Also, in affidavits and reports I have cited journal articles authored by opposing experts that roundly contradict their current opinions. So an expert ought also have an extensive collection of periodical publications in one's field with a computer database to access it all. That is why I compiled and offered to my colleagues *QDE Index*.

## 2005

90. *In re Thorn and Thorn, Debtors; Thorn and Thorn v Countrywide Home Loans, Inc.*; U.S. Bankruptcy Court, Northern District of Texas, Sept. 19, 2005

The court heard testimony from "Curtis Baggett, a handwriting expert," but it is not stated for which party he testified. The court found that the debtors, Walter and Marilyn Thorn, did not testify truthfully when they stated they did not sign the Note and Deed of Trust in question, nor that two checks were stolen and not signed by Marilyn Thorn.

COMMENTARY: A case of routine admissibility.

## 2008

91. *In re Claybrook; Bell v Claybrook*, 385 BR 842 (Bankr. Court, ED TX 2008); affirmed, *Claybrook v Bell*, Civil Action No. 4:08-CV-205, U.S. Bankruptcy Court No. 04-44541, 05-4013. (US Dist. Ct. ED TX 2008)

US District Court:

"Claybrook alleged at trial that her signature on the promissory note was forged by Bell, a claim directly refuted by the testimony of Bell's handwriting expert, Linda James, who

concluded that the disputed signature was in fact Claybrook's. The bankruptcy court, finding Ms. James's testimony more credible than Claybrook's, concluded that the representation was made. This court cannot conclude that the bankruptcy court's finding was error."

COMMENTARY: A case of routine admissibility. Ms. James is a diplomate member of NADE and served as president.

2009

92. *Hammen and Hammen, Debtor(s). Bain Estate v Hammen and Hammen*, 399 B.R. 867 (United States Bankruptcy Court, S.D. Iowa., 2009)

The Court accepted Barbara Downer's expert opinion that Ms. Bain signed the disputed document using print, whereas her exemplar signatures were cursive. However, the inferences Hammen and Hammen wanted to make from this were rejected.

COMMENTARY: Ms. Downer is a member and former president of NADE. She showed exceptional mastery of the graphic motor sequence to arrive at a reliable, credible and acceptable opinion of "highly likely" in a situation where most handwriting experts confess to inability even to make rudimentary comparisons.

93. *In re Lavender; Manheim's Pennsylvania Auction Services, Inc., v Lavender*, Bankr. Court, Case No. 806-70091-ast, Adv. Proc. No. 07-1172-ast. (ED New York 2009)

"Manheim was not able to produce the original 1998 Financial Statement signed by Mr. Lavender. Mr. Lavender hired an expert witness, Jeffrey H. Lubner, to testify....

"Based on his analysis of a copy of the purported 1998 Financial Statement that he examined, Mr. Lubner concluded that he could not reach an opinion on whether the document was a genuine copy or a forgery by simulation. In his report [Tr. Ex. H], Mr. Lubner stated: 'The poor quality of the submitted Q1b [questioned document] precludes any conclusion concerning authorship by [Debtor].'

"Although Mr. Lubner noted certain concerns, he never expressed an opinion that the 1998 Financial Statement was a forgery by simulation or otherwise, or was a 'cut-and-paste' job."

Due to the dubious credibility of Lavender and his contradictory statements, the Court found in favor of Manheim.

COMMENTARY: Footnote 2 says: "At trial neither Mr. Wynn, Mr. Lavender, nor Mr. Lubner commented on the facsimile transmission header at the very top of both pages of Tr. Ex. 21: 'Sep 09 98 11:15a LAVENDER AUTO SALES (516) 928-7702.' An inference could be drawn that the facsimile transmission header on Plaintiff's Trial Exhibit 21 establishes that the 1998 Financial Statement was faxed to Manheim by Mr. Lavender. However, because no witness testified as to the meaning or significance of this fax header, this Court does not draw this inference."

The rule is that the fact-finder may make an independent comparative examination of disputed handwriting with or without aid of a lay or expert witness. I wonder if that might extend to other aspects of the document? For sure the bankruptcy judge did not think so, so it most probably does not. Still it would be an interesting issue to be pursued by a legal scholar or a desperate trial lawyer.

94. *In re Youngblood; Marshall, et al., v Youngblood*, Case No. 07-70072, Adversary No. 07-07014. (Bankr. Ct. SD TX 2009)

Plaintiffs offered the testimony of Linda James: “Ms. James is a certified, published forensic expert with significant experience serving as an expert witness in civil and criminal cases. Ms. James compared ‘known’ signatures of Ms. Sawyer and Ms. Youngblood to the signatures on the disputed checks. ‘Known’ signatures were signatures pre-dating the disputed transactions and taken from documents whose authenticity was not contested. Ms. James attempted to identify ‘characteristics’ unique to the known signatures and then examined the disputed signatures for the same ‘characteristics.’ Based on the number and quality of ‘characteristics’ found in the disputed signatures, Ms. James classified the disputed signature along a classification scheme that varied based on the probability of the forgery.

“On cross-examination, Ms. James made several important admissions. She admitted that she examined only copies rather than original documents. She admitted that analyzing originals is preferred and more accurate. Ms. James also admitted that the ‘known’ signatures and all other documents were provided solely by Plaintiffs’ attorney. Ms. James admitted that she had not examined the disputed power of attorney document. Most importantly, Ms. James admitted that she was not told Ms. Sawyer’s age or that she had suffered a stroke. Ms. Holdridge testified that Ms. Sawyer had suffered a stroke in April of 2002, just before the disputed transactions. Ms. Holdridge also testified that Ms. Sawyer had someone else write her checks after suffering the stroke. Ms. James admitted that health conditions could affect a signature. All the ‘known’ signatures of Ms. Sawyer given to Ms. James predated Ms. Sawyer’s stroke.

“The Court need not make a determination of Ms. James’s credibility or the reliability of her findings. Assuming the Court accepted Ms. James opinion as true, a crucial question remains unanswered: did Ms. Sawyer give Ms. Youngblood the authority to sign her name to the checks?” The Court concluded that plaintiffs did not disprove Youngblood’s testimony that Sawyer had given such authority. They had the burden to do so because they had pled conversion, theft, common law fraud, and breach of fiduciary duty.”

COMMENTARY: I quoted at length because courts usually do not provide such perceptive summary, yet comprehensive description, of the expert’s testimony. We are at the mercy of the ability and/or willingness of our clients to provide sufficient exemplars and information for the case at hand. Still, we should ask, and even cajole if need be, the client to supply sufficient and proper materials. Unfortunately we might be flying blind and not know till too late that we have been set up by our own client.

Ms. James is a member of NADE.

2010

95. *Jordan and Jordan v Commissioner*, 134 TC 1 (US Tax Court 2010)

Handwriting expert Richard Orsini testified that the wife had signed the husband’s signature on a Form 900. However, due to countervailing evidence, the court found the signature valid. Even if not, other considerations prevented Jordan from reneging on an agreement under which he had already made payments.

COMMENTARY: Mr. Orsini is a certified member of NADE.

## 2011

96. *In re Dwek; Dwek v Sun National Bank and consolidated case*; Case No. 07-11757, Lead Adversary No. 07-1616, Consolidated Adv. No. 07-1697. (Bankr. Ct. D. NJ 2010); *In re Dwek, Dwek, et al., v Sun National Bank, et al.*, Bankruptcy No. 07-11757 (KCF), Adv. Proc. No. 07-1616 (KCF), No. 07-1697 (KCF), Civil Action No. 10-3770 (MLC). (US Dist. Ct. D. NJ 2011)

“At trial, the Bank presented the testimony of J. Wright Leonard who was qualified as an expert in handwriting analysis. Among other qualifications, Ms. Leonard is board certified by the National Association of Document Examiners and the American Board of Forensic Examiners [Ex. D50]. The Dweks did not present any expert testimony in rebuttal. Ms. Leonard concluded that the signature on the Mortgage was that of Joseph Dwek.”

COMMENTARY: The District Court affirmed the Bankruptcy Court’s decision and added a few interesting details to Leonard’s testimony, such as a Hebrew symbol appeared on documents that Leonard examined, though she could not identify the writer of the symbol.

## 2012

97. *In Re: Calvin J. Chapman, Chapter 7 Case, Debtor. Helena Chemical Company, et al., v Chapman*, Case No. 11-83991-JAC, A.P. No. 12-80002. ( US Bankruptcy Ct, N.D. AL 2012)

“Steven G. Drexler, Plaintiffs’ questioned document expert reviewed the 2007 Monsanto Technology Stewardship Agreement, the 2008 FarmFlex Seed Financing Statement, and the 2008 FarmFlex Loan Agreement, and determined that the signatures purporting to be those of Joseph C. Chapman were not authentic when compared to Joseph C. Chapman’s known handwriting exemplars. (Doc. 39-6). Mr. Drexler further opined that the signatures appearing on these Monsanto documents were consistent with the Debtor’s known handwriting exemplars, leading him to the conclusion that Joseph C. Chapman’s signature on the Monsanto Credit Documents at issue were, in fact, signed by the Debtor. Debtor has provided no substantial evidence to contradict Mr. Drexler’s conclusions.”

COMMENTARY: It is a tactical error to leave expert testimony unchallenged, particularly when one knows the opposing expert is correct. If one has made the strategic error of going to trial on a losing battle, one should avoid the tactical error of not contesting a critical issue.

98. *In re John L. Russo, Individually and as sole shareholder of CustomSignatureStamps.com Inc. Debtor. American Legal Commercial Printers, Inc. Douglas J. Russo, Plaintiff, v John L. Russo, Defendant*. Case No. 10-11576 K, AP No. 10-1110 K. (US Bankruptcy Ct. W.D. NY 2012)}

“34. The Court finds that Ms. [Joan] Winkleman’s expert testimony is persuasive, and accepted for the purpose offered - ‘It is “highly likely” that the hand that signed Douglas’ name on certain key documents (discussed later) was not Douglas’ hand.’” However, her testimony needed to be tied to Douglas’s testimony, since he stated which were his genuine signatures so that she properly used them for comparison.

COMMENTARY: Ms. Winkleman is a certified member of NADE. Douglas was the son, and John his elderly father who had defrauded him.

## C. FEDERAL COURTS OF APPEAL.

### 1987

99. *Winslow v Murray*, No. 87-7147, United States Court of Appeals, Fourth Circuit, Dec. 18, 1987. Unpublished disposition.

Winslow maintained that his criminal trial resulted in conviction due to ineffective assistance of counsel. One claim of ineffective assistance was failure to investigate the Commonwealth's handwriting expert's report and to obtain an expert to testify for the defendant. However, defense counsel at trial had studied the report and consulted an expert who said the Commonwealth's expert was highly qualified and who advised on how to cross-examine. Defense counsel concluded the expert's "report was probably accurate." Defense counsel "was not ineffective for failing to attempt to get the state to pay for an expert to testify for Winslow at trial." A case is cited which says counsel is not ineffective for failing to look for an expert with a favorable opinion after consulting with an expert who gave an unfavorable opinion.

COMMENTARY: Since there was advice on how to cross-examine the Commonwealth's handwriting expert, one can safely presume there was testimony by the expert.

This is pre-*Daubert*, but it raises an issue that cries out for an editorial comment and that is disapproved of in *Winslow*. With all the current theories about why there is inadequate science and reliability in expert testimony, no alleged authority on the issue has gone to the central cause: shopping by attorneys for favorable opinions. For example, prosecutors who received honest but undesirable opinions from criminalists, went shopping until they ended up with Fred Zane. However, by addressing this central contagion academicians could not inveigle public funds for research, lab equipment, paid vacations masquerading as conferences, lucrative witness fees, ego-enhancing publications and similarly disinterested academic pursuits.

### 1993

100. *U.S. v Dockins*, 986 F. 2d 888 (5th Cir. 1993)

At page 894: "Nancy Davis, a document examiner, testified that the signature of Carl Smith on the fingerprint card was written by Dockins."

COMMENTARY: Besides being a case of routine admissibility, it seems to be a rather non-routine case of self-representation. Defendant, choosing to represent himself, wanted a third incompetency hearing and a mistrial if it was not granted. Footnote 1 describes the situation:

"Outside the presence of the jury, Dockins told the court:

'I don't know how to represent myself. And the law — the states if you don't want an attorney representing you, you can explain that to the jury, the defendant's conduct, or whatever, or however it states, that it's going to be a mistrial.'

"The court responded:

'Well, it's obvious to the Court what you're attempting to accomplish here.'"

If you enjoy tales of self-created melodramas, you might like to read the entire case report.

101. *U.S. v Durr*, 1993 U.S. App. LEXIS 30987 (9 Cir 1993)

A source said this was a *Daubert* handwriting case, but I have not been able to retrieve it.

102. *U.S. v Jeffries*, 995 F.2d 234 (9 Cir. 1993)

William DeVries, an IRS document examiner, testified at sentencing hearing that Jeffries had disguised one requested exemplar by speeding up his writing and the other by slowing down. The court found that to be obstruction of justice. Objection on appeal that handwriting examination was not a science was rejected since the Ninth Circuit had found it was in *United States v. Fleishman*, 684 F.2d 1329, 1337 (9th Cir.) (“It is undisputed that handwriting analysis is a science in which expert testimony assists a jury.”), cert. denied, 459 U.S. 1044 (1982). The objection that DeVries was unqualified was also rejected, a rejection backed by a brief summary of his qualifications.

COMMENTARY: The poor critics might well get a new headache from opinions such as this one. Not only are these regressive creatures considered as engaging in science, but they may testify to disguise in writing which necessarily addressees mental intention. Primary research back 100 years or more supports it all, but then it is a widely accepted mythology since *Exorcism of Ignorance* that these realities do not exist nor ever existed.

103. *U.S. v Parkinson*, 991 F.2d 786 (1 Cir. 1993)

“At trial, Sara Plourd was asked if she recognized the note and responded: ‘Yes, that’s the note that the man gave me.’ And following the note’s admission into evidence, the FBI document examiner identified it (by means of his initials which he had written on the back) as the one that had been sent to him for examination; as mentioned, he also identified the writing as that of defendant. As he did below, defendant now argues that the court erred in admitting the note because the government failed to prove an uninterrupted chain of custody.”

The argument failed because, at least at that time, the rule was only when “the offered evidence is of the type that is not readily identifiable or is susceptible of alteration, a testimonial tracing of the chain of custody is necessary.” The note was readily identified by Plourd and the document examiner.

COMMENTARY: As a safer course of action, a document examiner does the best one can in the circumstances to establish an unbroken chain of custody and also make sure one can positively identify the evidential document when presented with it much later in court.

104. *U.S. v Susskind, et al.*, 4 F.3d 1400 (6 Cir. 1993)

Two document experts testified to different aspects of the documents, and I quote the full description of their testimony at page 1404:

“The government presented numerous witnesses in addition to Mr. Janice. Among the government’s witnesses was the questioned document examiner from the Michigan State Police, who testified that he had analyzed loan documents from Rumler I bearing the dates June 3, 1986; August 5, 1986; and December 5, 1986. He went on to give it as his opinion the documents had all been prepared at the same time and probably by the same person; that the December document had been signed after having been placed on top of the June and August documents; and that all three documents, which were very fresh looking, had been folded together at the same time.

“A second expert witness testified that the typewriter and printwheel from Mr. Susskind’s law office produced the same horizontal spacing, vertical spacing, line spacing and alignment as



found on the purported loan documents. This witness testified further that the correction ribbon from Mr. Susskind's office had been used to correct all three documents. Based on his analysis of the ink from the ballpoint pen with which Mr. Rumler had signed the documents dated June and August of 1986, finally, the witness testified that the documents could not have been signed before 1987, because the ink was not manufactured until that year."

COMMENTARY: Though there is no handwriting identification, I include this case since it embraces a wealth of tasks performed by document examiners.

105. *U.S. v Tarricone, et al.*, 996 F2 1414 (2 Cir 1993)

It was ineffective assistance of counsel for failure to consult a handwriting expert, who would not have to be disclosed unless used at trial. Though defendant told counsel the handwriting was not his, it was not obvious from just looking at it. It was block letters versus script. Lay handwriting evidence contradicted defense counsel's opening statement that jury would not find defendant's handwriting on the "throughput." Jury asked for read-back on the testimony and on counsel statements about handwriting. So it loomed big, said Court of Appeals.

COMMENTARY: It is reasonable to infer that, if the Court of Appeals had not considered the expertise reliable and admissible, it could hardly have found that failure to consult an expert was ineffective assistance of counsel.

1994

106. *U.S. v Chernoff, et al.*, 1994 U.S. App LEXIS 8399 (7 Cir 1994)

"Defendants...raise a multiplicity of issues, all of which lack merit." One issue was the handwriting expert testimony. Two arguments against the testimony are given. First, the witness did not know the source of the questioned documents he examined, and so his reliance on them was not reasonable, to which the Court replies: "There is no reason that the handwriting expert needed to know the source of the documents in order to determine whether they matched the exemplars." Second, the questioned documents and exemplars were supplied by the Government of which he was an employee. However, with ample opportunity on cross-examination the defendant did not bring out any basis for exclusion of the expert testimony.

COMMENTARY: The two contentions against the expert testimony are of the same speculative "reasons" made up out of thin air as the anti-expert experts come up with. However, the latter are more clever in their inventions and so require that their victims be more astute in ferreting out the speculation and negating it.

107. *U.S. v Riddle*, 41 MJ 673 (AF Ct Cr Ap 1994)

Use of a handwriting expert is not necessary, but it is the mark of solid case preparation.

COMMENTARY: If the Court had not considered the expertise reliable, it could not have rationally said it is a mark of solid case preparation.

108. *U.S. v Rivera, et al.*, 22 F.3d 430 (2 Cir 1994)

At page 436: "And though Rivera maintains that Rodriguez had fabricated her testimony as to his involvement in the organization, her testimony was corroborated by expert testimony that a

number of organization records were in Rivera's handwriting."

COMMENTARY: No indication is given that the expert testimony was challenged. However, it was admissible, and one can surely cite the case for that fact.

109. *U.S. v Valdez, et al.*, 16 F.3d 1324 (2 Cir 1994)

It is obstruction of justice to disguise handwriting exemplars, thus making handwriting comparison more difficult. The writings in question were drug records. At page 1135: "In any event, there are few better examples of a classic obstruction of justice than a defendant who refuses to give handwriting samples when compelled by a subpoena. His disguise of his handwriting made difficult the comparison of his writing with that in the drug transactions notebook seized by the government, thus hindering the government in its investigation."

COMMENTARY: It made the comparison difficult, not impossible. The expert may determine disguise in handwriting, a skill well supported by published research.

1995

110. *Beech Aircraft Corp. v U.S.; Evangelista v. U.S.; Taubman Co., Inc., v U.S.*, 51 F.3d 834 (9 Cir 1995)

Proffered expertise on sound enhancement and linguistics was properly excluded, because what can be heard on tape is within the jury's ability. At page 842: "This Circuit has outlined four criteria to determine the helpfulness of expert testimony: '1) qualified expert; 2) proper subject; 3) conformity to a generally accepted explanatory theory; and 4) probative value compared to prejudicial effect.' *United States v Amaral*, 488 F.2d 1148, 1153 (9th Cir. 1973)." Footnote 9 says that, although *Amaral* was decided prior to Federal Rules of Evidence, Ninth Circuit still applies it.

COMMENTARY: This decision should be considered case specific in that this particular witness would not offer any assistance to this jury. It has been cited in relation to cases of handwriting expertise.

111. *U.S. v Brown*, 66 F.3d 124 (8 Cir 1995); 156 F.3d 813, 1998 U.S. App. LEXIS 21896; rehearing denied, 1998 U.S. App. LEXIS 26893 (8 Cir 1998)

In the report at 66 F.3d 124, headnote 13 reads: "Prosecutor's observation during closing argument that defense had not called handwriting expert was appropriate rebuttal to defense's reference to prosecution's failure to call such witness."

At 156 F.3d 813, page 815: "Brown was ordered to furnish a handwriting sample so that it could be compared to certain incriminating documents which allegedly were in his handwriting. He refused.... Brown's refusal to give an exemplar was not privileged, and the jury could properly consider his refusal as evidence that the results of that testing would have been adverse."

COMMENTARY: By inference, the Eighth Circuit confirms the propriety of presenting handwriting evidence. This is another post-*Daubert* case which gives no thought to the legal theory manufactured by Risinger, et al. One could also reasonably argue that, if the Court had not

considered handwriting comparison reliable, it would have been abuse of discretion to affirm the long-standing rules on compelling exemplars from a suspect and of arguing regarding a refusal to provide them. There are a great number of cases addressing this rule; citing them all would lengthen this text by 10-20%.

112. *US v Musa*, 45 F. 3d 922 (5 Cir. 1995)

COMMENTARY: As elegant evidence of how incidental an expert's testimony can be, we need to arrive at Footnote 2 to read: "An expert document examiner compared the writing on the Hotel Guide with an exemplar taken from Musa and testified that Musa wrote both."

113. *U.S. v Oyairo*, 53 F.3d 332 (Ct. App. 6 Cir. 1995)

Oyairo was convicted of entering a sham marriage in order to circumvent the immigration laws. One error argued on appeal was testimony by document examiner Nancy Berthold. It was contended that Berthold testified outside her area of expertise in several regards. One was that she testified to falsity in signatures on Nigerian documents when she did not have exemplars from the individuals whose signatures they were. However, she testified to indicia of falsity in the signatures and the inferences to be made therefrom. This was what handwriting experts did. This and all other challenges to her testimony were found to be without merit.

COMMENTARY: This is another case where, if the defense had consulted with a competent and perceptive document examiner, it could have made better challenges to Berthold's testimony, though the same examiner would not have given any guarantee of success given the candidness and caution with which the case report indicates she expressed herself. For example, she might have been asked about the indicia of falsity in signatures also being characteristic of some people's genuine writing. This might have cast some doubt in the jury's mind, though it might have well asked itself could so many people, all signing the same document, have exhibited the same complex of so many somewhat rare handwriting traits.

114. *U.S. v Renteria and Renteria*, Fed. Dist. Ct. NW, No. CR 95-320 JP, Order Entered on Docket 10/3/95 [ABFDE Resource Kit]; 925 FS 722 (D. NM 1996); vacated, 138 F.3d 1328, 1998 U.S. App. LEXIS 4706, 1998 Colo J Bar 1408 (10 Cir 1998)  
Order Entered 10/3/95:

Defendant brought *in limine* motion to suppress anticipated testimony of document examiner, Joseph A. Mongelluzzo, that defendant's signature was on a DEA Consent to Search Form. The motion was denied as having been filed untimely, after the deadline set by the Court to which neither party had objected.

COMMENTARY: No legal analysis was offered by the judge since the motion was brought untimely. Attorneys at times are not permitted by some judges to procrastinate, however rarely.

115. *U.S.; Government of the Virgin Islands, v Sanes*, 57 F2 338 (3 Cir 1995)

A *Daubert* hearing was held on proffered defense expert testimony from a "professor of linguistics." At page 341: "We conclude that the district court appropriately limited Dr. Holien's expert testimony to the pertinent issue of whether the distinguishing factors on Sample No. 4 unduly influenced Ms. Velez's selection. We also conclude that the district court did not abuse

its discretion in excluding from the jury's consideration the testimony that would have compared eyewitness and voice identification."

COMMENTARY: There simply was no showing of reliability for the excluded evidence. This case is cited at times when handwriting expertise is considered.

116. *U.S.; Government of the Virgin Islands v Velasquez*, 64 F3 844, 33 V. Is. 265 (3 Cir 1995)

Lynn Bonjour, government handwriting expert, made a very positive impression on the Court of Appeals, as evidenced by several places in the record. Defendant sought to introduce Mark P. Denbeaux at trial as an expert witness as to the limitations of handwriting identification, but he was ruled inadmissible. The Court of Appeals held both experts admissible under *Daubert*. Ms. Bonjour gave succinctly and very clearly an intelligent methodology which she followed. In a footnote at 279 the Court quotes Ms. Bonjour's estimate of Professor Denbeaux's "Exorcism" article: "Ms. Bonjour acknowledged that she had read Professor Denbeaux's law review article, although her critique — 'it's a lot of gibberish' — was less than glowing."

At page 278 is stated why Denbeaux was admissible: "In particular, we point to the Professor's eight years of self-directed research on handwriting analysis and his co-authorship of a law review article on the subject." The research referred to was literature research, not laboratory or field research.

COMMENTARY: The Court of Appeals very explicitly asserts the scientific reliability of handwriting identification. The challenge was precisely that the expertise was not scientifically reliable, but the Court of Appeals states that the Trial Court rejected this challenge and the Court of Appeals did also. When one rejects one of two prongs of a complete disjunction (handwriting expertise is not scientifically reliable), one necessarily accepts the other (handwriting expertise is scientifically reliable). However, the critics, not liking what clearly contradicts their thesis, said that the ruling of the *Velasquez* Court was ambiguous. This is typical of their perception and reporting of reality. Ms. Bonjour, highly regarded by those who knew and worked with her, perished in an automobile accident.

117. *U. S. v Wade*, 45 F.3d 424 (1 Cir. 1995)

An FBI handwriting expert identified Wade as writer of a hold-up note.

COMMENTARY: A case of routine admissibility.

Several years ago a would-be bank robber entered Wells Fargo in San Francisco Financial District. The teller said she could not honor his hold-up note since it was written on a Bank of America form and directed him to the Bank of America across the street. He went there, and the teller told him she could not honor it since he had presented it originally to Wells Fargo. When he returned to Wells Fargo, the police were waiting for him.

1996

118. *Equal Employment Opportunity Commission v Allen Petroleum Company of East Tennessee, Inc.*, 1996 U.S. App. LEXIS 16824 (6 Cir 1996)

Company appealed award against it and Court of Appeals reversed and remanded. Footnote 1 reads: "Brown denies having any knowledge of the reprimand or discussing it with Seymour. The

written reprimand does, however, bear Brown's signature, according to the testimony of a handwriting expert."

COMMENTARY: A case of routine admissibility.

119. *Knapp v Gomez, et al.*, 1996 U.S. App. LEXIS 18482 (9 Cir 1996); Reported in Table Case Format at: 92 F.3d 1192, 1996 U.S. App. LEXIS 28156; certiorari denied, 1997 U.S. LEXIS 757 (US 1997)

The evidential value of the testimony of a handwriting expert was not outweighed by its prejudicial effects.

COMMENTARY: An expert's admissibility can be attacked on several bases, a reliability challenge being only one possibility. Presumably in this case the reliability was not challenged.

120. *Rosenfeld v Basquiat*, 78 F.3d 84, U.S. App. LEXIS 4475, 43 Fed R Evi Serv (Callaghan) 983 (2 Cir 1996)

The report only mentions that handwriting expert testimony was received.

COMMENTARY: A case of routine admissibility.

121. *Securities and Exchange Commission v American Capital Investments, Inc, et al.; Shaw v Shaffer*, 1996 U.S. App. LEXIS 27685 (9 Cir.); reported in table case format, 99 F.3d 1146, 1996 U.S. App. LEXIS 40416

"Shaw disputes that the signature on the deed was a forgery, arguing that he had no opportunity to cross-examine the Receiver's graphology expert."

COMMENTARY: The graphology expert's qualifications were not challenged, only the lack of opportunity to cross-examine was complained of. All of appellant's complaints were rejected.

122. *U.S. v Afrifa*, 91 F.3d 134, 1996 U.S. App. LEXIS 35205

Defendant's *in limine* motion to exclude handwriting expert was denied. He argued failure of Government to disclose the expert's qualifications, opinion and basis thereof. Court of Appeals said Trial Court properly denied motion *in limine* and forbade argument at trial on nondisclosure, since defendant knew before his second trial that the expert was on the witness list, defendant's exemplars had been requested, and there was oral disclosure. However, the required request for formal disclosure had not been made. Further, no cut-off date for discovery was set, and the expert's written report was produced the day before trial, though no formal request was made.

COMMENTARY: The challenge was not made timely. Reading between the lines, one can easily infer that the lady expert, who is unnamed, would have passed muster easily.

123. *U.S. v Boateng*, 1996 U.S. App. LEXIS 8220 (9 Cir 1996); Reported in Table Case Format at: 81 F.3d 170, 1996 U.S. App. LEXIS 21189 (9 Cir 1996); certiorari denied, in *Boateng v U.S.*, 519 U.S. 878, 117 S. Ct. 203, 136 L. Ed. 2d 138, 1996 U.S. LEXIS 5628, 65 U.S.L.W. 3262 (US 1996)

Two INS files were properly admitted into evidence because fingerprint and handwriting analysis showed that the named individuals were the same person, defendant.

COMMENTARY: A case of routine admissibility.

124. *U.S. v Brown*, 1996 U.S. App. LEXIS 8695 (4 Cir 1996)

Handwriting expert concluded the handwriting of Brown, a convicted felon, was on ATF form to purchase gun.

COMMENTARY: A case of routine admissibility.

125. *U.S. v Bruce*, 778 F.3d 1506, 1996 U.S. App. LEXIS 5299 (10 Cir 1996)

Convicted of extortion and mailing threatening communications, defendant's sentence was enhanced when FBI expert identified him as writer of a third letter he had asked a government informant to type and mail for him.

COMMENTARY: A case of routine admissibility.

126. *U.S. v Crouch and Frye*, 835 FS 938 (S.D. TX 1993); affirming dismissal of indictment, 51 F.3d 480 (5 Cir 1995); reversed and remanded, 84 F.3d 1497, 1996 U.S. App. LEXIS 12536 (5 Cir 1996); petitions for writs of certiorari, 1996 U.S. App. LEXIS 23153; in *Crouch and Frye v U.S.*, 519 U.S. 1076, 117 S. Ct. 736, 136 L. Ed. 2d 676, 1997 U.S. LEXIS 306, 65 U.S.L.W. 3487 (US 1997)

1996 U.S. App. LEXIS 12536:

In prosecution for alleged loan and savings offences, Frye contended that loss of the original document in question prevented defense handwriting analysis from proving with the copy that the signature was genuine and he did not make it. However, the Government did not try to prove the opposite, and the charge was not dependent on that issue. Further, Footnote 41 ends: "There was no evidence that any handwriting expert had ever examined the copy or opined that no handwriting analysis could be based on it."

COMMENTARY: Although no handwriting expert had testified in District Court's hearing on motion to dismiss, I include this case lest it be cited as authority that a copy of a signature or handwriting cannot be the subject of expert examination and opinion. On the other hand, it belongs in this list in so far as a criminal defense, which typically charges the expertise with unreliability, premises its argument on the assumption that the expertise is reliable enough to prove the signature in copy to be genuine.

127. *U.S. v Gonzales*, and related cases, 90 F.3d 1363, 1996 U.S. App. LEXIS 18433, 45 Fed. R. Evid. Serv. (Callaghan) 226 (8 Cir 1996)

Various convictions relating to illegal drugs and money laundering were affirmed. A search warrant turned up notebooks "consistent with drug notes" and Western Union cash receipts. At [\*5]: "Further, Debra Springer, a handwriting expert who analyzed the writing on the MTAs [money transfer applications], testified as to how many documents were produced by each individual." Gonzales contended that the admission of this testimony was error. In footnote 5, the Court of Appeals states that the admission of this evidence was not abuse of discretion. The MTAs were admissible because of the foundation the government had established, and the portions filled out by the defendants were not hearsay but an admission by a party-opponent. At [\*22]: "A handwriting expert connected the defendants to a number of these transactions."

COMMENTARY: Not only was the handwriting expert properly admitted, but she was a key to some of the convictions, being the one to connect the defendants to the criminal acts of money

laundering. By inference, the jury would have found her evidence to be proof beyond a reasonable doubt.

128. *U.S. v Hannah*, 1996 U.S. App. LEXIS 26377, 97 F.3d 1267, 96 Cal. Daily Op. Service 7524, 96 Daily Journal DAR 12351 (9 Cir 1996); certiorari denied, 1997 U.S. LEXIS 1120 (US 1997)

During deliberations in trial for bank robbery, jury asked “whether Hannah could be guilty if he had not been the driver.” The judge gave an aiding and abetting instruction and allowed counsel time for additional argument. Hannah argued this instruction prejudiced him. “The police found a fingerprint on the hold-up note that matched Hannah’s, and the FBI’s handwriting expert concluded ‘to a reasonable degree of scientific [\*3] certainty’ that Hannah wrote the demand note.” Later another supplemental instruction was given and additional argument permitted. The jury found Hannah wrote the hold-up note and was guilty as principal. The only evidence of another participant was Hannah’s own testimony.

COMMENTARY: A case of routine admissibility.

129. *U.S. v Hardwell*, and related cases, 80 F.3d 1471, 1996 U.S. App. LEXIS 6594, 44 Fed. R. Evid. Serv. (Callaghan) 571 (10 Cir 1996); rehearing denied in part and granted in part, 1996 U.S. App. LEXIS 16617

Authenticity of exhibits in dispute was established by government’s handwriting expert.

COMMENTARY: A case of routine admissibility.

130. *U.S. v Hubbard*; *U.S. v Lyon*, 1996 U.S. App. LEXIS 24813, 96 F.3d 1223, 96 Cal. Daily Op. Service 7098, 96 Daily Journal DAR 11619 (9 Cir 1996)

Defendants registered vehicles in California and Texas. Claiming original title documents were lost, they applied for duplicates that came back with the space for mileage figures being blank. They filled in a lower figure and altered the odometer. In a search with a warrant, the “lost” titles were found in Hubbard’s desk. At [\*8]: “A handwriting expert testified that Lyon had written at least some of the mileage figures on vehicle documents.”

COMMENTARY: The handwriting expert was permitted to identify the maker of numerals, a more difficult task than for a signature or for extended handwriting or handprinting.

131. *U.S. v Maldonado, et al.*, 1996 U.S. App. LEXIS 26723 (9 Cir 1996)

Expert testimony for the government “indicated” one defendant signed money transfers and some correspondence and that two other defendants signed or filled out other documents. Thus these were not hearsay but constituted admissions by a party.

COMMENTARY: A case of routine admissibility.

132. *U.S. v McClelland*, 1996 U.S. App. LEXIS 5201, 1999 Colo. J. C.A.R. 1662 (10 Cir 1996)

[\*4] Testimony from a handwriting expert established that Mr. McClelland signed five of the Western Union forms used to send money to California and that it was probable that he signed the remaining two forms.”

COMMENTARY: A case of routine admissibility.

133. *U.S. v McKinney*, 88 F.3d 551, 1996 U.S. App. LEXIS 15683; rehearing denied, 1996 U.S. App. LEXIS 15683 (8 Cir 1996)

Defendant was convicted of threatening a member of Congress. He acknowledged to investigators having written several objectionable letters but denied having written an anonymous threat letter. "At trial, Mr. McKinney's admission regarding the signed letters was admitted. In addition, an expert testified that the handwriting in the signed letters matched the writing in the unsigned letter and its envelope. Another expert testified that Mr. McKinney's palm print was on the unsigned letter, and that someone else's fingerprints [\*4] were on its envelope."

COMMENTARY: A case of routine admissibility.

134. *U.S. v Miller; U.S. v Hicks*; 84 F.3d 1244, 1996 U.S. App. LEXIS 11576 (10 Cir 1996); certiorari denied, 1997 U.S. LEXIS 6756 (US 1997)

A small, black address book was found on Miller. At [\*25]: "A handwriting expert testified that the same person wrote the numerals in Government's Exhibit 6A, the red Mead notebook, and Government's Exhibit 14, Mr. Miller's address book. The handwriting expert testified, however, that a different person wrote the printing and numerals in Government's Exhibit 9, the small blue spiral memo book."

COMMENTARY: A case of routine admissibility.

135. *U.S. v Ortiz*, 317 US Ap DC 262, 82 F.3d 1066, 1996 U.S. App. LEXIS 9931 (Cir DC 1996)

"Ortiz presented testimony from his priest, his employer, his wife, and family friends to show that he was working, as his April work time cards showed, on the dates of the drug transactions. In addition, he presented two expert witnesses. A foreign language interpreter opined, based on comparing Ortiz' English proficiency with that of the speaker on the tape recording of the April 10th tape conversation, that 'it is probably not Mr. [\*5] Ortiz who is on [the] tape.' A forensic document examiner opined that Ortiz' left-handed handwriting samples and the written pager number given to Valentine, which contained evidence of a right-handed writer, were 'entirely different.' n6"

Footnote 6 reads: "In rebuttal the government presented the testimony of two co-defendants, who had entered pleas, that they had delivered drugs to Ortiz, and that one co-defendant had no information that Ortiz was working at the relevant times."

COMMENTARY: A case of routine admissibility wherein once more it seems that the Government purchases testimony from criminals by offering a good deal.

136. *U.S. v Phaneuf*, 91 F.3d 255, 1996 U.S. App. LEXIS 18999 (1 Cir 1996)

It seems that forensic handwriting evidence was used only during investigation and at the sentencing phase.

COMMENTARY: It is a case of routine admissibility.

137. *U.S. v Rahman*, 83 F.3d 89, 1996 U.S. App. LEXIS 10855 (4 Cir 1996)

At [\*3]: "Further, defense counsel conceded in his opening statement that Rahman had



completed and signed the ATF forms. And, expert testimony confirmed that the handwriting on the ATF forms was Rahman's and that his fingerprints had been discovered on one of them."

COMMENTARY: A case of routine admissibility, and one where the expert was superfluous given defense counsel's concession on the issue.

138. *U.S. v Ramos*, 1996 U.S. App. LEXIS 15216 (9 Cir 1996); Reported in Table Case Format at: 87 F.3d 1324, 1996 U.S. App. LEXIS 31643

A handwriting expert testified "that Ramos might have forged the signatures" of two others on Department of Motor Vehicles documents.

COMMENTARY: A case of routine admissibility.

139. *U.S. v Rivenbank*, 1996 U.S. App. LEXIS 6081 (4 Cir 1996)

Convictions for bank fraud, wire fraud, mail fraud and possession of firearm by convicted felon are affirmed. Several checks and two wills were forged against a man's estate. Thomas Goyne testified to signatures being traced, simulated, "or some other imitation method."

COMMENTARY: Goyne seems to have done a lot of work on this case. The report is worth reading for the brazenness of Rivenbank and his girlfriend. He made incriminating statements and even filed a complaint with the FBI, presenting to an agent two forged \$150,000 checks on a long-closed account and saying that the heirs were preventing him from having what decedent had given him.

140. *U.S. v Spring*, 80 F.3d 1450, 1996 U.S. App. LEXIS 6162, 44 Fed. R. Evid. Serv. (Callaghan) 395 (10 Cir 1996)

In a trial for bank robbery, "The defense presented testimony from a handwriting expert, who expressed the opinion that Mr. Spring did not write the demand note."

The jury heard testimony that after a police line up, participants asked Spring why they were told to say certain things. He replied that he did not know since that was not what they had said during the robbery.

COMMENTARY: A case of routine admissibility.

141. *U.S. v Taylor*, 88 F.3d 938, 1996 U.S. App. LEXIS 18140, 10 Fla. L. Weekly Fed. C 180 (11 Cir 1996)

Conviction and sentence for sending threatening communications were affirmed in a case growing out of stalking of long standing, 20 years, and for which defendant had previously been convicted.

Refusal to comply with subpoena for handwriting exemplars and then disguising them when finally complying supported sentence enhancement. He freely admitted that he had written cards and letters to the victims, amounting to some 1,000 items, but this was not sufficient compliance with need for exemplars because he did not admit to writing the cards in question. The government expert finally used the signature on the fingerprint card taken when Taylor was arrested.

COMMENTARY: A case of routine admissibility, but not, hopefully, was it a routine case of competence. Why not use the more or less 1,000 admittedly genuine writings to the same folks as

exemplars, unless one is so unskilled at comparing handwritings that only precisely similar letters, words and phrasing will do?

142. *U.S. v Waters*, 1996 U.S. App. LEXIS 25281 (6 Cir 1996); Reported in Table Case Format at: 96 F.3d 1449, 1996 U.S. App. LEXIS 28934

“An expert at trial testified that the KKK letter was written by the same person who addressed the first package, although neither Sands nor Waters could be identified as the writer. However, Water’s handwriting was identified as similar to the writing of the word ‘powder’ on a legal pad with a diagram.”

COMMENTARY: A case of routine admissibility.

143. *U.S. v Whitaker*, 1996 U.S. App. LEXIS 24197 (7 Cir 1996)

Defendant was convicted of mailing a threatening communication and threatening the President. The appeal was found to be entirely frivolous, the reasons being discussed at length. A handwriting expert testified the letter of threat was in defendant’s handwriting.

COMMENTARY: A case of routine admissibility.

144. *U.S. v Woodbine*, 1996 U.S. App. LEXIS (4 Cir 1996)

“The government proved the identity element of the offense through fingerprint and handwriting specialists. Although Woodbine contends the expert testimony was not persuasive, the jury could accept or reject it.”

COMMENTARY: A case of routine admissibility.

145. *Vest v Commission of Internal Revenue*, 1996 U.S. App. LEXIS 15424, 96-2 U.S. Tax Cas. (CCH) P50,573, 78 A.F.T.R. 2d (RIA) 5560 (7 Cir 1996)

A handwriting expert testified in tax court.

COMMENTARY: A case of routine admissibility.

146. *Willis v U.S.*, 87 F.3d 1004, 1996 U.S. App. LEXIS 15680 (8 Cir 1996)

Handwriting expert identified Willis as maker of false entries on a loan application.

COMMENTARY: A case of routine admissibility.

## 1997

147. *Soto v Flores, et al.*, 103 F.3d 1056, 1997 U.S. App. LEXIS 496 (1 Cir 1997); certiorari denied, 522 U.S. 819; 118 S. Ct. 71; 139 L. Ed. 2d 32; 1997 U.S. LEXIS 4739; 66 U.S.L.W. 3255 (US 1997)

Footnote 3 states that Soto claimed Flores’ signature on an “Other Services Report” was an after-the-fact forgery and that her claim was supported by a handwriting expert and by Flores’ testimony which suggested pressure was put on him.

COMMENTARY: A case of routine admissibility.

148. *U.S. v Achiekwelu*, 112 F.3d 747, 1997 U.S. App. LEXIS 9393 (4 Cir 1997); certiorari denied, *Achiekwelu v U.S.*, 522 U.S. 901, 118 S. Ct. 250, 139 L. Ed. 2d 179, 1997 U.S. LEXIS 5915, 66 U.S.L.W. 3262 (US 1997)

“This case is interesting and somewhat unusual, involving, as it does, the activities of someone who tried to defraud and was himself successfully defrauded by someone else. The criminal proceedings were only directed at the one whose plan produced, from his point of view, favorable results.” Defendant presented testimony of a retired FBI handwriting expert who “testified that he had examined two sets of exemplars: the faxed documents that Gupta had received and a set of genuine documents that Achiekwelu provided. He further testified that, in his opinion, the same person probably had not signed the two sets of documents.”

COMMENTARY: A case of routine admissibility with the added aspect that faxed handwritten documents are permitted to be the subject of expert opinion. The poetic justice is also delightful, in that one con was successfully defrauded and the successful con was successfully prosecuted. Each got his comeuppance.

149. *U.S. v Akhtar*, 1997 U.S. App. LEXIS 34871 (Cir DC 1997); reported in Table Case Format: 1997 U.S. App. LEXIS 40299

“Appellant also asserts that he suffered unfair prejudice when the District [\*3] Court allowed eccentrically written notes, which were allegedly penned by appellant and were found in appellant’s briefcase at the time of his arrest, to go back with the jury during deliberations. These notes were used by the government’s handwriting expert to identify appellant’s handwriting as the same as the writing on the forged check. We do not believe that the District Court abused its discretion...”

COMMENTARY: A case of routine admissibility.

150. *U.S. v Artega, and related cases*, 117 F.3d 388, 1997 U.S. App. LEXIS 18467, 47 Fed. R. Evid. Serv. (Callaghan) 417, 97 Cal. Daily Op. Service 5805, Daily Journal DAR 9353 (9 Cir 1997); certiorari denied, 1997 U.S. LEXIS 7002 (US 1997); post-conviction relief denied, 2003 U.S. App. LEXIS 4787 (9 Cir 2003)

“The government - inexplicably - offered no proof that the writing on the relevant [\*3] documents was the defendants’, nor did any witness place defendants at locations where the transfers were initiated or completed.” Some convictions were therefor reversed, the compelling reason being given in footnote 27: “Isn’t the alias like a signature, belonging only to Laverde? Can’t the jury infer that no one but Laverde would have written that name? No; a signature identifies a unique individual - a handwriting analyst can rule out any other signer with a high degree of certainty. The alias, by contrast, could have been used by anyone familiar with the scheme.”

COMMENTARY: The failure to call a forensic handwriting expert caused some convictions to be reversed, which is equivalent to saying the expertise can be a necessity and not merely adequately reliable.

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151. *U.S. v Brazel*, and related cases, 102 F.3d 1120, 1997 U.S. App. LEXIS 85, 46 Fed. R. Evid. Serv. (Callaghan) 240, 10 Fla. L. Weekly Fed. C 621 (11 Cir 1997); certiorari denied, in *Brazel v U.S.*, 522 U.S. 822, 118 S. Ct. 78, 118 S. Ct. 79, 1997 U.S. LEXIS 4782 (US 1997)

One defendant had given a first exemplar and refused a second after a court order. The judge instructed that the refusal could be taken as consciousness of guilt, while the handwriting expert explained why the first exemplar was inadequate. The testimony was not objected to, and the instruction was not error.

COMMENTARY: A case of routine admissibility.

152. *U.S. v Chohan*, 95 CR 876 (ED N.Y. 1996); 1997 U.S. App. LEXIS 17487 (2nd Cir); Reported in Table Case Format at: 1997 U.S. App. LEXIS 29693, 122 Fed.3d 1057; certiorari denied, in *Chohan v U.S.*, 522 U.S. 974, 118 S.Ct. 428, 139 L.Ed.2d 329, 1997 U.S. LEXIS 6830, 66 U.S.L.W. 3337 (US 1997)

1997 U.S. App. LEXIS 17487 (2nd Cir)

Defendant argued at appeal that admission of expert handwriting testimony was error. Court of Appeals said that, assuming it was error, it was harmless due to the overwhelming evidence of guilt.

COMMENTARY: The decision of the trial court regarding defense *in limine* motion to exclude expert handwriting testimony was: "The Court in *Daubert* dealt with scientific knowledge. I find that Ms. Kathleen Maguire is qualified as an expert on disputed documents. I find that she may testify on the specialized knowledge and I find that her testimony will assist the jury."

This seems to me to be an escape trick for the expert, specially so since the profession overall touts its scientific standing. How many texts in the field use the word "scientific" in their titles? Enough for a small sized professional library I hazard. Defendant might have had a better chance by pointing out to the judge that Maguire belonged to AAFS, where the "S" stands for "Sciences," not "Skills" or "Specialties."

153. *U.S. v Harvey*, 117 F.3d 1044, 1997 U.S. App. LEXIS 16101, 47 Fed. R. Evid. Serv. (Callaghan) 492 (7 Cir 1997)

Harvey was convicted of growing marijuana. Notebooks found in his camp were authenticated in two ways by the government. First, only the grower would have written them, but that assumes Harvey was the grower, and "this is circular reasoning at its worst." Secondly, the contents were such as known only by Harvey, and that properly authenticated them.

However, prior to this discussion, the Court states at pages [\*12-13]: "The authentication issue here is whether Harvey really authored the written materials found at the campsite. For some unknown reason, the Government did not attempt to authenticate the written materials using handwriting analysis. Rule 901(b) specifically contemplates the use of handwriting comparisons to authenticate written materials, and such a comparison would have been the preferred method here. Rule 901, however, does not mandate handwriting comparisons, and the Government suggests that the notes and diaries were properly authenticated by other means."

COMMENTARY: Although there was no expert handwriting testimony, the case is supportive of both its admissibility and preference over alternative means.

154. *U.S. v Jones*, 880 FS 1027 (E.D. TN 1995), 1997 US Ap LEXIS 3696; 1997 Fed Ap 0082p; 46 Fed R Evid Serv (Callaghan) 885; 107 F.3d 1147 (6 Cir 1997); cert. denied, 1997 U.S. LEXIS 4185; 521 US 1127, 117 S.Ct. 2527 (1997)

Handwriting expert evidence is a technical skill, and its reliability is to be decided on a case-by-case basis. Federal Rules of Evidence 901(b)(3) provide for authentication of a document by “[c]omparison . . . by expert witnesses with specimens which have been authenticated.” Grant Sperry of USPS was Government expert.

107 F.3d 1147, at page 1157: “We are quite convinced that handwriting examiners do not concentrate on ‘posing and refining theoretical explanations about the world,’ *Daubert*, 509 U.S. at 590, 113 S.Ct. at 2795, but instead use their knowledge and experience to answer the extremely practical questions of whether a signature is genuine or forged.” With lots of quotes from friend and foe alike, the Court says in footnote 10: “In deciding that handwriting analysis does not rest on ‘scientific knowledge,’ we do not decide whether other tasks performed by forensic document examiners...are based on scientific knowledge.”

Then at page 1160: “In short, expert handwriting analysis is a field of expertise under the Federal Rules of Evidence. This decision, however, does not guarantee the reliability or admissibility of this type of testimony in a particular case. Because this is not scientific expert testimony, its reliability largely depends on the facts of each case.” Then later, to support the expert’s admissibility: “To put it bluntly, the federal government pays him to analyze documents, the precise task he was called upon to do in the district court.” Then the Court says Sperry outlined his procedure and used enlarged exhibits which enabled the “jury to observe firsthand the parts of the various signatures on which he focused.” At page 1161: “But we wish to emphasize that just because the threshold for admissibility under Rule 702 has been crossed, a party is not prevented from challenging the reliability of the admitted evidence.”

COMMENTARY: Courts are meant to resolve real disputes in a reasonable and common sense fashion, not serve the ego and academic impulses of inventors of new scientific myths about what truth is and is not. In effect, the anti-expert experts propose that we all suffer any injury unless and until alleged scientists like them tell us it is their considered opinion that we may do otherwise. The forger is left all practical, time-tested means of fraud, but Risinger and company say we must forego all practical, time-tested means of countering the forger’s fraud. They assert this on the basis of theories which are neither practical nor time-tested, much less established in any way other than general acceptance among those who are willing to swallow mass belief in the collective word of academics. In brief, whereas *Daubert* ended the *Frye* rule of general acceptance, only general acceptance supports the criteria that *Daubert* added to general acceptance.

155. *U.S. v Lherisson*, 1997 U.S. LEXIS 34110, 1997 U.S. App. LEXIS 39541 (1 Cir 1997); certiorari denied, 1998 U.S. LEXIS 1256, 522 US 1136, 118 S.Ct. 1095, 140 L.Ed.2d 150 (1998)

The beginning of one sentence gives the entire statement about handwriting evidence: “A handwriting expert testified that the signature on the March 24, 1989 letter of credit was in fact Lherisson’s....”

COMMENTARY: A case of routine admissibility.

156. *U.S. v Logan*, 121 F.3d 1172, 1997 U.S. App. LEXIS 20842, 47 Fed. R. Evid. Serv. (Callaghan) 806 (8 Cir 1997)

In a trial for various drug offences, an examiner of documents testified that Logan probably wrote money wire transfers, “based on [a] reasonable degree of scientific certainty in the field of handwriting analysis.”

COMMENTARY: It is a case of routine admissibility with the added twist that the handwriting expert witness was permitted to assert scientific certainty.

157. *U.S. v Magallon*, 1997 U.S. App. LEXIS 35756 (9 Cir 1997); Reported in Table Case Format At: 1997 U.S. App. LEXIS 40368; certiorari denied, 1998 U.S. LEXIS 3801 (US 1998); certiorari denied, 1998 U.S. LEXIS 4892 (US 1998)

Prosecution motion to exclude defense handwriting expert was at first denied and then granted after Trial Court read transcript of hearing before another judge wherein defense counsel said he would call his handwriting expert only in rebuttal to the Government’s expert. The prosecution had agreed not to call the latter and did not.

COMMENTARY: I include this lest someone one day argue the exclusion was due to a finding of lack of reliability.

158. *U.S. v Miller, et al.*, 116 F.3d 641, U.S. App. LEXIS 14974, 46 Fed R Evid Serv (Callaghan) 1174 (2 Cir 1997); certiorari denied, 1998 U.S. LEXIS 3606 (US 1998)

A handwriting expert testified for the Government, identifying one writer of addresses of murder victims on a document found in defendant’s apartment. Later in the case the Government realized it did not have a key document, so it subpoenaed it and disclosed it to Defense, who objected to its admission on basis of prejudice due to late disclosure. At page [\*110]: “When [Defense Counsel] was asked what prejudice Robinson claimed from the late disclosure, he stated that he was deprived of the opportunity to consult handwriting and fingerprint experts with respect to the document. The court indicated that this was not an adequate demonstration of prejudice since Robinson could present such expert testimony during defense case, that the court would entertain a request for a continuance if needed, and that in the absence of prejudice the court would admit the document. We see no abuse of discretion in this ruling.”

COMMENTARY: It is a case of routine admissibility, with the added indication that Defense Counsel recognized the value of the expertise in his own case.

159. *U.S. v Rosario*, 118 F.3d 160, 1997 U.S. App. LEXIS 17330 (3 Cir 1997)

At page 163, the “probability” finding by Secret Service handwriting expert, Jeffrey Taylor, was given although he did not know why there were “irreconcilable” differences present. Then at page 165: “Finally, we acknowledge that this is a close case. Indeed, were we sitting as triers of fact, we very well may have come to a different conclusion than the jury did here. Nevertheless, we cannot say that there was insufficient evidence to support the jury’s verdict.”

COMMENTARY: First, the expert ought to have given an opinion of either “indications are” or some degree of non-authorship until he had determined a reasonable explanation for the presence of each and every “irreconcilable” difference. The Court of Appeals’ upholding of the verdict seems to amount to affirming a finding of fact at trial that was much less than beyond a

reasonable doubt. The well reasoned dissent explains lucidly why the conviction should have been overturned and how this handwriting expert opinion was remarkably inexpert. Nevertheless, nothing indicates that the expertise itself was other than reliable and admissible.

160. *U.S. v Ruth*, 42 MJ 730, 1995 WL 450976 (Army Ct Cr Ap 1995); affirmed on other grounds, 46 MJ 1 (CAAF 1997)

Handwriting expertise is technical rather than scientific, nor is it novel. The appointment of Denbeaux as defense expert was denied because he was a law professor and not an examiner of documents nor did he have knowledge of the case at hand. Defense counsel was told he could cross-examine S. A. Horton, the handwriting expert, with Denbeaux's article, but he never did.

COMMENTARY: Denbeaux and his like have turned trials, at least criminal cases involving techniques of identification, into findings about theoretical musings rather than findings of fact. They did so by creating a new case law at the trial level which admits "experts" lacking all expert knowledge of the identification issues in the case at bar. It used to be that one had to know relevant facts, now one merely need assert that one's speculative theorizing, devoid of all factual content, is relevant. At least the *Ruth* Court required case specific knowledge. Hopefully more and more courts will prefer reality over speculative musings.

161. *U.S. v Scarborough*, 128 F.3d 1371, 1997 U.S. App. LEXIS 29790, 47 Fed. R. Evid. Serv. (Callaghan) 1395, 158 A.L.R. Fed. 725, 1997 Colo. J. C.A.R. 2609 (10 Cir 1997)

Beverly Mazur, handwriting expert with Nebraska Police Crime Lab, testified that ten Express Mail labels had been made out by the same person. Some of them had Scarborough's name and address. Another issue of interest is that the drug-alert dog had an on-the-job reliability rate of 92% correct. On loan to the Postal Service the rate dropped to 79%, but that did not make reversible error when a search was based on the dog's alert.

COMMENTARY: A case of routine admissibility.

162. *U.S. v Shodeinde and Fasheun-Tokunbo*, 1997 U.S. App. LEXIS 5435 (2 Cir 1997); reported in Table Case Format: 108 F.3d 1370, 1997 U.S. App. LEXIS 10197

Shodeinde pled to, and Fasheun-Tokunbo was tried and convicted of, submitting false claims for tax refunds. Proof at trial included "expert testimony that the defendants had authored much of the writing on sixteen returns."

COMMENTARY: This is a case of routine admissibility.

163. *U.S. v Stein*, remand for resentencing, 37 F.3d 1407 (9 Cir 1994); affirmed in part, reversed in part, remanded for resentencing, 1997 U.S. App. LEXIS 21267, 127 F.3d 777, 97 Cal. Daily Op. Service 7883, 97 Daily Journal DAR 12680 (9 Cir 1997)

To cover up securities fraud, Stein fabricated many forgeries. At trial for it all, he submitted in evidence another forged document, the basis for a sentence enhancement. He offered the testimony of a handwriting expert who said it was "unlikely" that Stein had himself forged the latter document. Testimony was given at sentencing hearing in effort to defeat enhancement for obstruction of justice, but it availed him nothing.

COMMENTARY: A case of routine admissibility.

164. *U.S. v Stevenson*, 126 F.3d 662, 1997 U.S. App. LEXIS 28697 (5 Cir 1997)

FBI experts testified that Stevenson's fingerprints were on a threatening letter and that the letter and envelope were written by him. Another agent testified that he had admitted writing the letter.

COMMENTARY: A case of routine admissibility wherein, because of defendant's admission, the experts would seem to have been superfluous.

165. *U.S. v Thompson*, 130 F.3d 676, 1997 U.S. App. LEXIS 34136, 48 Fed R Evi Serv (Callaghan) 447 (5 Cir 1997)

In jail on contempt charges, Thompson solicited another inmate to hire a hit man to do in the judge who put him there. "Gerber, an admittedly unsavory character, wrote letters to the FBI and to Judge Hoyt, alerting each to the threat Thompson posed." Thompson wrote notes to Gerber related to the proposition. At trial an expert testified that the handwriting matched Thompson's.

COMMENTARY: A case of routine admissibility.

166. *U.S. v Washington*, 109 F.3d 335, 1997 U.S. App. LEXIS 5002 (7 Cir 1997)

In a three-strike conviction, a handwriting expert identified defendant as writer of demand notes in bank robberies.

COMMENTARY: A case of routine admissibility.

167. *Wallis, et al., v Carco Carriage Corp., Inc.; Campbell Hardage, Inc., v Nash*, 1997 U.S. App. LEXIS 25309, 1997 Colo. J. C.A.R. 2092 (10 Cir 1997)

"[\*27] The plaintiffs called a handwriting expert to testify that Nash's signature on the rental agreement was a forgery, theorizing that the rental clerk had signed Nash's name because he was too intoxicated to sign his own name."

COMMENTARY: A case of routine admissibility.

## 1998

168. *U.S. v Addair*, 1998 U.S. App. LEXIS 32677 (4 Cir 1998); Reported in Table Case Format at: 1998 U.S. App. LEXIS 37824; cert. denied, 1999 U.S. LEXIS 3129 (1999)

Regarding records in conviction for violations of Federal Mine Health and Safety Act, a handwriting expert testified entries were made by defendant but signatures could not be identified "because the signatures appeared to be laboriously prepared, as if they had been traced." But they had characteristics in common with defendant's handwriting.

COMMENTARY: A case of routine admissibility.

169. *U.S. v Atkins*, 1998 U.S. App. LEXIS 6689 (4 Cir 1998)

Conviction for bank fraud and embezzlement upheld. It was not error to permit bank manager to compare defendant bank teller's known writing with bank codes found in her cash drawer. At page [\*7]: "Atkins also challenges the admission of the piece of paper containing a series of codes and numbers found in her cash drawer."

COMMENTARY: One not a document examiner was properly permitted to give expert



testimony on handwriting. It was a combination of personal acquaintance and testimony from comparison. Further, “a series of codes and numbers” were identified as to its maker. I believe this was a bit of fudging on the rules limiting a lay witness to handwriting.

170. *U.S. v Battles*, 156 F.3d 852, 1998 U.S. App. LEXIS 23251 (8 Cir 1998)

Conviction on six counts of access device fraud was affirmed. “At Battles’s trial, his former wife, a handwriting expert, and credit card company employees testified that Battles obtained two credit cards in his former wife’s name without her knowledge, and after their divorce accrued charges acceding \$1,000 on each credit [\*3] card in a period of less than one year.”

COMMENTARY: A case of routine admissibility.

171. *U.S. v DeBerry*, 1998 U.S. App. LEXIS 9354 (7 Cir 1998)

A fingerprint expert testified defendant’s prints were on a bank robbery note, and a handwriting expert testified it was in his handwriting.

COMMENTARY: A case of routine admissibility.

172. *U.S. v Dedhia*, 134 F.3d 802, 1998 U.S. App. LEXIS 854, 1998 FED App 0026P (6 Cir 1998); application for stay denied, in *Dedhia v U.S.*, 118 S. Ct. 1838, 1998 U.S. LEXIS 3408, 66 U.S.L.W. 3757 (US 1998); certiorari denied, 523 U.S. 1145, 118 S. Ct. 1844, 140 L. Ed. 2d 1105, 1998 U.S. LEXIS 3475, 66 U.S.L.W. 3757 (US 1998)

At [\*6-7]: “The government introduced testimony from a handwriting expert that Patel’s signature on the I-751 form was a forgery. In addition,...the form itself did not exist at the time it was purportedly to have been executed....”

COMMENTARY: A case of routine admissibility.

173. *U.S. v Hajda*, 963 F.Supp.1452 (N.D. Ill. 1997); affirmed, 135 F.3d 439, 1998 U.S. App. LEXIS 1048, 48 Fed. R. Evid. Serv. (Callaghan) 859 (7 Cir 1998)

District Court found defendant to have been a Nazi prison guard, at page [\*12-13], “based largely on the government’s ‘overwhelming’ documentary evidence.” Previously defendant’s sister had given statements that he had been a Nazi guard. At page [\*18]: “Kazimiera’s trial testimony is similarly incredible. Her denial that her statements bore her signature was contradicted by a handwriting expert.”

COMMENTARY: This is a case of routine admissibility.

174. *U.S. v McMahon*; *U.S. v Associated Health Services*, 1998 U.S. App. LEXIS 11821, 98-1 US Tax Cas (CCH) P50,486, 81 AFTR (RIA) 2295 (4 Cir 1998)

A chiropractor was convicted of writing phony prescriptions to defraud health insurers. Handwriting expert evidence was given.

COMMENTARY: A case of routine admissibility.

175. *U.S. v Nnadozie*, 1998 U.S. App. LEXIS 32634 (4 Cir 1998); Reported in Table Case Format at: 1998 U.S. App. LEXIS 37831

Department of State special agent, William Maher, was called by defense, and said he met

twice with defendant to obtain handwriting samples. On cross it was proper to let him answer as to why he took the second samples, that he felt defendant had disguised the first set of samples.

COMMENTARY: A case of routine admissibility with testimony as to disguise.

176. *U.S. v Ortiz*, 136 F.3d 161, 329 U.S.App.D.C. 18 (Ct. App. DC (1998)

Footnote 11: “A foreign language interpreter testified that Ortiz probably was not the person whose voice was recorded on the telephone tapes because Ortiz’s English was not good enough. A forensic document examiner testified that Ortiz’s writing samples did not match ‘Carlos’s’ writing style.” “Carlos” was an alias that Ortiz used.

COMMENTARY: A case of routine admissibility.

177. *U.S. v Proctor*, 98-2 US Tax Cas (CCH) P50, 884; 82 AFTR 2d (RIA) 7168; 1998 Colo JCAR 5966; 1998 U.S. App. LEXIS 29820 (10 Cir 1998)

The District Court erred in finding the Government had met the requirement of disclosing before trial the reasons and bases of expert opinions of document examiner James Puckett. “The government was required to provide a foundation for Mr. Puckett’s opinions prior to trial.” However, defendants knew his opinion, he testified in full to methodology, they could cross-examine, and they could have asked for continuance to prepare to discredit him, but “this they failed to do.”

COMMENTARY: One has the nagging suspicion that rules are for defendants to abide by without allowance for the least failure, but for the Government to have any plausible excuse, particularly one that adds more burden to the defense. The expertise itself was not challenged, but a challenge upon appeal to Puckett’s qualifications failed.

178. *U.S. v Stuart*, 150 F.3d 935, 1998 U.S. App. LEXIS 17476 (8 Cir 1998)

In prosecution for making false statements to a firearms dealer, “Expert testimony established that the handwriting on Form No. 4473 was appellant’s handwriting....”

COMMENTARY: This is a case of routine admissibility.

## 1999

179. *Ervin v Delo and Bowerson*, 194 F.3d 908, 1999 U.S. App. LEXIS 25700 (8 Cir 1999)

At trial, “handwriting experts testified Richard had probably written” a note found in the murder victims’ home.

COMMENTARY: A case of routine admissibility.

180. *Gregory v Interstate/Johnson Lane Corp.*, 1999 U.S. App. LEXIS 20862 (4 Cir 1999)

Denying she had signed an arbitration agreement on which her husband’s signature was not disputed, plaintiff “provided the opinion of Mr. Joseph H. Bowers, an experienced handwriting expert with a background in the Federal Bureau of Investigation,” who said both her signatures were forgeries “to a reasonable degree of certainty.”

COMMENTARY: A case of routine admissibility.

181. *Hahn and Hahn v Star Bank, et al.*, 190 Fed.3d 708, 1999 U.S. App. LEXIS 20935, 1999 FED App. 0317P (6 Cir 1999)

Plaintiffs appealed several rulings given against them by the Trial Court. At [\*11]: “The Hahns presented a purported handwriting expert who stated in his affidavit that one of the signatures of Beth Wayne might be hers, but not both, although he had not examined any other examples of her signatures. Wayne’s affidavit, on the other hand, states that both signatures are hers.”

COMMENTARY: It was kind of the Court of Appeals not to name the “purported” expert who now knows never be content with only what the client gives when more is feasible.

182. *U.S. v Austin*, 101 F.3d 107, 1996 U.S. App. LEXIS 4374, 1996 WL 107379 (unpublished table decision) (2 Cir 1996); affirmed after remand in part, 1999 U.S. App. LEXIS 19254 (2 Cir 1999); Reported in Table Case Format at: 1999 U.S. App. LEXIS 28820

In 1996 U.S. App. LEXIS 4374, at page [\*4], the Court states: “Although there is some dispute as to whether Austin actually knew the owner of the account, a handwriting expert testified at trial that both checks were endorsed by Austin.”

COMMENTARY: A case of routine admissibility.

183. *U.S. v Battle*, No. 98-3246, 1997 (D.C. No. 97-40005-01, District of Kansas); WL 596 966 (10 Cir. Aug. 6, 1999); 117 FS2 1175 (D.C. KS); 188 F.3d 519 (10 Cir 1999); cert. denied, 120 S.Ct. 602 (1999) [Court of Appeals’ Order and Judgment.]

The third of six issues Battle raised on appeal from drug conviction was: “(3) the district court erred in admitting expert testimony concerning a signature on a Western Union money transfer record.” Dennis McPhail, a document examiner, was found fully qualified and testified from Battle’s exemplar signatures that he had signed “Anthony Jenkins” to the money transfer record. In reply to challenge that McPhail’s testimony did not meet *Daubert* criteria, the Court of Appeals said there was no abuse of discretion by the Trial Court, and: “Our study of the record on appeal convinces us that McPhail’s proffered testimony met the reliability and relevancy test of *Daubert*.” But if it were error, it was harmless considering the evidence as a whole. “The Western Union money transfer was merely one bit of circumstantial evidence tending to corroborate the testimony of, as we said, a plethora of witnesses linking Battle to the conspiracy.”

COMMENTARY: This unequivocal ruling on reliability, which the critics seem not to have been able to find in their diligent research for pertinent court cases, is surely unequivocal. Note that Courts of Appeal almost routinely say that a thing was not error then immediately say that, even if it were, it was harmless for some reason. This is the same mentality of trial lawyers [after all, judges are trial lawyers!] who routinely argue their position is unassailably right, but just in case the judge should find it not, here is a second and even third backup position that is equally or more unassailably right. The law school professors, who are anti-expert critics and apparently inept trial lawyers, at times hold this trait to be an indication that the backup ruling of an appeal court is evidence that the first ruling was wrong or at least highly suspect. But that argument is used only when the first ruling is disagreeable to the critic.

184. *U.S. v Chacko*, 169 F.3d 140, 1999 U.S. App. LEXIS 3156 (2 Cir 1999); certiorari denied, in *Chacko v U.S.*, 534 U.S. 930, 122 S. Ct. 293, 151 L. Ed. 2d 216, 2001 U.S. LEXIS 7152, 70 U.S.L.W. 3243 (US 2001)

Defendant/Appellant contended that the prosecutor's remarks violated his constitutional rights. At page [\*26], in part the prosecutor said: "Of course, the defendant knew he had to explain them, the documents, away because Gus Lesnevich, the handwriting expert, positively identified the signature and handwriting as Kurian Chacko's." Conviction for bank fraud and false statements in a loan application was affirmed.

COMMENTARY: A case of routine admissibility.

185. *U.S. v Jane Doe*, 1999 U.S. App. LEXIS 21400 (4 Cir 1999); Reported in Table Case Format at: 1999 U.S. App. LEXIS 36648

An expert testified that the photo and signature on a Diversity Visa lottery petition that Doe was using were probably not hers.

COMMENTARY: A case of routine admissibility.

186. *U.S. v Farhad*, 1999 U.S. App. LEXIS 21846, 190 F.3d 1097, 99 Cal. Daily Op. Service 7550 (9 Cir 1999); certiorari denied, 2000 U.S. LEXIS 1974 (US 2000)

Representing himself, defendant was convicted on fourteen counts of mail fraud and five of false use of social security numbers.

COMMENTARY: At trial Frankie Frank offered expert handwriting and fingerprint evidence, but the appeal decision concerns only the issue that Farhad had a constitutionally unfair trial by representing himself. However, *Faretta v California*, 422 U.S. 806, 45 L.Ed.2d 562, 95 S.Ct. 2525 (1975), said a criminal defendant is entitled to waive his Sixth Amendment right to counsel. The concurring opinion, cataloging Farhad's many mistakes, agrees that *Faretta* ought to be reconsidered, but meanwhile the Court of Appeals is bound by it.

187. *U.S. v Gaines*, 70 Fed.3d 72, 1999 U.S. App. LEXIS 3813, 51 Fed R Evi Serv (Callaghan) 8000 (1 Cir 1999)

A defense witness testified Gaines was with him on certain dates, referring to his 1996 date book which had relevant notations in red ink. Secret Service Senior Document Examiner Larry Stewart testified that red ink appeared for no other entries in the date book, the inference being that the relevant entries were a late addition to support the testimony.

COMMENTARY: A case of routine admissibility.

Mr. Stewart was the object of criticism with another Secret Service ink expert in *Thereza Imanishi-Kari, Ph.D.*, DAB No. 1582 (1996), Department of Health and Human Services, Departmental Appeals Board, RESEARCH INTEGRITY ADJUDICATIONS PANEL, SUBJECT: Thereza Imanishi-Kari, Ph.D. DATE: June 21, 1996; Docket No. A-95-33; Decision No. 1582. The complete decision is available on the Internet:

<http://www.dhs.gov/imm/immstudies/1582.htm>

The decision exonerating Dr. Imanishi-Kari provides a scathing, but very courteous, assessment of ink testing and analysis practices used by Mr. Stewart and his colleague, John W. Hargett. This academic case provides excellent guidance on assessing similar expert evidence in

court cases from a scientific approach by very accomplished scientists in academia. They point the way to a far more perceptive and fruitful critique of forensics than the anti-expert experts ever provided cumulatively.

188. *U.S. v Lawson*, 173 F.3d 666, 1999 U.S. App. LEXIS 6387 (8 Cir 1999); certiorari denied, 528 U.S. 909, 145 L. Ed. 2d 215, 120 S. Ct. 256 (1999); in *Lawson v U.S.* motion to vacate sentence denied and conviction affirmed, 22 Fed. Appx. 686, 2001 U.S. App. LEXIS 26276 (8 Cir 2001)

Affirming conviction of being a felon in possession of firearms. A handwriting expert testified that Lawson's known signatures matched those on various documents relating to pawning and redeeming from pawn various firearms.

COMMENTARY: A case of routine admissibility.

189. *U.S. v Mastrangelo*, 941 FS 1428 (E.D. PA 1996); reversed and remanded for new trial, 172 F.3d 288, 1999 U.S. App. LEXIS 6373 (3 Cir 1999)

"A handwriting expert testified that the lease for the locker was probably signed by Mastrangelo and the locker rental agent testified that the renter was approximately the same height, age, and hair color as Mastrangelo, but neither witness's testimony was unequivocal."

COMMENTARY: A case of routine admissibility.

190. *U.S. v Morrow, et al.*, 177 F.3d 272, 1999 U.S. App. LEXIS 10222 (5 Cir 1999); cert. denied, 1999 U.S. LEXIS 8160 (US 1999); cert. denied, 2000 U.S. LEXIS 418 (US 2000)

A handwriting expert testified defendant Freeman prepared false documents in question.

COMMENTARY: A case of routine admissibility.

191. *U.S. v Page*, 1999 U.S. App. LEXIS 2359 (6 Cir 1999); Reported in Table Case Format at: 1999 U.S. App. LEXIS 19221

In prosecution for unarmed bank robbery, "an impression of the defendant's brother's name and address, written in what an expert witness testified was Page's own handwriting, was discovered on the demand note."

COMMENTARY: A case of routine admissibility with the added issue that indented writing, apparently developed by electrostatic detection device (EDD), was identified as to its maker.

192. *U.S. v Paul*, D.C. Docket No. 1:97-CR-115-1-GET (N.D. GA 1997); affirmed, 1999 U.S. App. LEXIS 9050; 51 Fed R Evid Serv (Callaghan) 1462; 12 Fla L Weekly Fed (832); 175 F.3d 906 (11 Cir 1999)

Denbeaux, the critic of handwriting expertise, was disqualified, and Ziegler, the handwriting expert, was admitted. Denbeaux did not possess an acceptable degree of knowledge, would not have assisted jury, nor was he a qualified expert. He had done nothing beyond his "Exorcism" article.

COMMENTARY: Finally, a court required some useful, valid expertise from the anti-expert expert. In a CV from around 1985, Ziegler listed as part of his qualifications the teaching of "Eight Basic Steps of Graphoanalysis."

193. *U.S. v Rollack*, 1999 U.S. App. LEXIS 3201 (4 Cir 1999)

Sgt. Louis Savelli, of NY City P.D., testified as expert in gang codes. A handwriting expert identified defendant as writer of some letters with these codes. Another expert explained to the jury how the translated code messages fit into other evidence.

COMMENTARY: A case of routine admissibility and an excellent example of how various disciplines can work cooperatively to develop the complete evidence.

194. *U.S. v Salimonu*, 182 F.3d 63, 1999 U.S. App. LEXIS 15060, 52 Fed R Evid Serv (Callaghan) 711 (1 Cir 1999)

Two issues are pertinent in this case: exclusion of a linguist and testimony by a handwriting expert.

Regarding the linguist, the Court's summary in 182 F.3d 63 reads in part: "(4) district court's assessment that linguist's analysis of incriminating tape-recordings in comparison with exemplar of defendant's voice was not reliable, and thus was not admissible, was within the court's discretion; (5) such testimony also could be excluded on ground that linguist admitted that a layperson could distinguish the differences that he found..." Defendant had called the linguist to show it was not his voice on tapes.

A handwriting expert identified Salimonu as writer of a letter that corroborated other evidence of his acquaintance with an individual whose first name was mentioned in the letter.

COMMENTARY: Often the handwriting expert plays, as here, a very minor role in the case.

Regarding exclusion of the linguist, this case lets the narrow reading of *Daubert* by the anti-expert experts in challenging various forensic disciplines come back to haunt a defendant. Because of this exclusion, this case is at times cited in discussions of the admissibility of handwriting expertise.

195. *U.S. v Sylva*, 1999 U.S. App. LEXIS 20373 (9 Cir 1999)

On appeal one of defendant's issues was that District Court failed to hold a *Daubert* hearing on the admissibility of testimony by Larry Ziegler as handwriting expert on the basis that *Daubert* did not apply. It was abuse of discretion not to hold the requested hearing, but due to the overwhelming evidence of guilt, and handwriting evidence being a very small part of the total evidence, the error was harmless.

COMMENTARY: No ruling was made at the appeal level as to the challenges against Ziegler. The way the reason for ruling on harmlessness was worded, a small part of the total evidence, reminds experts they are often a very minor part of a trial. As the cases discussed herein indicate, rarely, if at all, does the prosecution appeal a limitation placed on its handwriting expert.

196. *U.S. v Vigneau*, 187 F.3d 82, 1999 U.S. App. LEXIS 16907 (1 Cir.)

At page [\*4]: "Nor did the government offer other direct or circumstantial evidence, such as a handwriting expert, to show that it was in fact Mark [Vigneau] who had completed the forms."

COMMENTARY: I include this case because there was no expert handwriting testimony, but there should have been. We have seen cases where it was offered yet considered of scant use. In other cases where it was an evidential necessity, it was not offered. This case may offer a selling point for you some day.

197. *U.S. v Ward*, 1999 U.S. App. LEXIS (4 Cir 1999)

Handwriting expert testified defendant prepared FedEx shipping documents.

COMMENTARY: A case of routine admissibility.

## 2000

198. *Ajinomoto Co, Inc., v Archer-Daniels-Midland Co.*, 228 F.3d 1338, 2000 U.S. App. LEXIS 24767, 56 USPQ2 (BNA) 1332 (Fed Cir 2000); amended, rehearing denied, 2000 U.S. App. LEXIS 31898 (Fed Cir 2000); certiorari denied, 2001 US LEXIS 3599 (US 2001)

Plaintiff prevailed in suit of infringement of patent in use of genetically modified bacteria, and Court of Appeals affirmed with modification of damages. ADM argued the patent invalid since the application was not properly signed. At page [\*12]: “ADM’s handwriting expert compared the fourteen signatures on the 1996 declaration with the fourteen signatures on the declaration filed in 1980 and gave the opinion that six or possibly seven of the signatures were not written by the same person. ADM’s expert conceded that the signatures were difficult to compare since those on the 1996 Russian document were written in the Russian (Cyrillic) script, whereas those on the 1980 English document were written in English script.”

COMMENTARY: This offers an example of comparison between different scripts. Too many handwriting examiners confuse “difficult” with “impossible” and “impossible for me” with “absolutely impossible.” Having said that, a gap of sixteen years requires exemplars contemporaneous with both the 1980 and 1996 signatures. Was either set comprised of all genuine signatures? Had any signatory significantly altered the writing style after sixteen years?

199. *Amiel v U.S.*, 209 F.3d 195, 2000 U.S. App. LEXIS 6879 (2 Cir. 2000)

A handwriting expert testified, but no details are given.

COMMENTARY: A case of routine admissibility.

200. *Oto v Metropolitan Life Insurance Co; Metropolitan Life Insurance Co. v Beverley*, 224 F.3d 601, 2000 U.S. App. LEXIS 19799, 55 Fed. R. Evid. Serv. (Callaghan) 220 (7 Cir 2000); rehearing denied, 2000 U.S. App. LEXIS 23701; certiorari denied, 2001 U.S. LEXIS 1229 (US 2001)

Beverley was Oto’s father-in-law who claimed Oto’s wife signed benefits over to him before her death. While this case was proceeding in Federal District Court, a Cook County court ruled that the wife’s signature on a deed in favor of her father was a forgery. The Federal District Court granted Oto summary judgment which was upheld on appeal. The transcript of the handwriting expert’s deposition had one sentence at odds with her other testimony and her report, namely that the writer of 12 exemplars had written the signature on the change of beneficiary at issue. She corrected that on an *errata* sheet. The District Court and the Court of Appeals both rejected Beverley’s argument, asserting on the contrary that the one sentence, either a typographical error or misstatement, “was not enough to create a genuine issue of material fact.”

COMMENTARY: Though this case did not involve trial testimony, I include it as an object lesson for all of us. An expert must be careful in stating an opinion lest it be misstated, but more importantly an expert must review a transcript of deposition in detail to correct the slightest error.

201. *U.S. v Akers*, 106 F.3d 414, 1997 U.S. App. LEXIS 25952 (10th Cir. Colo., 1997); 215 F.3d 1089, 2000 U.S. App. LEXIS 13108, 2000 Colo. J. C.A.R. 3377 (10 Cir. 2000); certiorari denied, *Akers v U.S.*, 531 U.S. 1023, 121 S. Ct. 591, 148 L. Ed. 2d 506, 2000 U.S. LEXIS 7977 (2000)

“Robert Theide, an expert in the field of forensic document examination, testified that it was his opinion that Akers had endorsed the back of one of the two counterfeit Coastal Corporation checks. Taken together, the testimony of Landuyt and Theide was sufficient to support an inference that Akers was responsible for the production [\*26] and presentation of the counterfeit Coastal Corporation checks for deposit to Commercial Federal Bank and that he knew they were counterfeit.”

Defense wanted its own handwriting experts but that was properly denied.

COMMENTARY: A case of routine admissibility.

202. *U.S. v Bentz*, 2000 U.S. App. LEXIS 27631 (6 Cir 2000); Reported in Table Case Format at: 2000 U.S. App. LEXIS 35139

Defendant was designated recipient of her son’s social security benefits. He was incarcerated, but defendant did not report this fact which made him unqualified for the benefits. A request for reconsideration was filed after Social Security Administration canceled his benefits because of his incarceration. At [\*4-5]: “Although a handwriting examiner testified that the Request for Reconsideration was not written in Bentz’s handwriting, the form contained her address, telephone number, and what appeared to be her signature.” Her conviction for fraudulently obtaining social security benefits was affirmed.

COMMENTARY: Defendant at least had a good sense of semantics. She called Social Security to enquire why benefits had been canceled, and in reply to where her son was living she said he was out of town. When the official said he was in prison, she replied, “Well, that’s kind of like being out of town.”

203. *U.S. v Brumley*, 2000 U.S. App. LEXIS 15993, 217 F.3d 905, 54 Fed R Serv 3d (Callaghan) 1454 (7 Cir 2000)

Having admitted the signature on a *Miranda* waiver “appeared to be a copy of his signature,” after his conviction defendant asked the Trial Court to permit a handwriting expert to examine the waiver, which the Court allowed. The expert said the signature was defendant’s but that there was evidence of alterations and ink touch-ups along with undeciphered indented writing. Motion for further testing and new trial on basis of newly discovered evidence was denied, and the conviction was affirmed upon appeal. Defendant did not explain on appeal why the document had not been examined before trial.

COMMENTARY: Though there is no mention of challenge to reliability of the expert’s work and findings, by such omission the reliability seems to have been taken for granted by everyone. In any case, this can be cited as another instance of acceptability of the expertise in post-*Daubert* litigation. Note that, here as elsewhere, upon appeal the incompetence of defense trial counsel in not doing a thorough investigation and trial preparation is credited to defendant personally, as is appeal counsel’s failure to cover all issues needed to support the appeal.



204. *U.S. v Campos*, 221 F.3d 1143, 2000 U.S. App. LEXIS 17444, 55 Fed. R. Evid. Serv. (Callaghan) 226 (10 Cir 2000)

In a conviction for interstate transportation of child pornography by computer, “the document examiner testified that it was probably Mr. Campos’s handwriting on a document with the file name resembling the file name that contained a pornographic photograph.”

COMMENTARY: However, a probability added to a resemblance hardly seems to amount even to preponderance of evidence, much less beyond a reasonable doubt. Presumably there was other compelling evidence for conviction.

205. *U.S. v Cusack*, 66 F. Supp. 2d 493 (S.D. NY); affirmed, 229 F.3d 344, 2000 U.S. App. LEXIS 25627, 55 Fed R Evid Serv (Callaghan) 1071 (2 Cir 2000); *habeas corpus* petition denied, 2001 WL 1568808, 2001 U.S. Dist LEXIS 20358 (S.D. NY 2001)

Conviction for making and uttering false JFK documents is affirmed. Defense asked for a continuance so that Robert J. Phillips, who had just suffered an eye injury, could be called as a handwriting expert. Denial was not error: “Because Cusack did not announce his intention to call Phillips until after the start of trial, and the content of Phillips’ testimony was not known, the district court did not abuse its discretion by denying the continuance.” At pages [\*10] and [\*11].

COMMENTARY: The appeal report does not mention that two witnesses were called by the Government as handwriting experts. One, Gus Lesnevich, had prior to hiring out to the prosecutor examined at least some of the documents for an investor, whose attorney wrote a letter denying permission for the Government to use Lesnevich in the case. He worked for the Government anyway. The rule is that it is unethical for an expert who has worked in the same case or on the same material for a first client to work for a second client without explicit permission from the first client. He also testified on redirect that he had not proved the documents in question to be forged, only that they could have been forged and that Cusack could have forged them. Defense was permitted to call Herry O. Telsher, now deceased, as a handwriting expert.

In the related New York civil case, attorney Carl Person filed approximately a two-foot stack of affidavits of percipient and expert witnesses, mostly setting forth evidence available during the criminal trial but never used by defense attorney. Although the civil defendants filed no controverting evidential affidavits to this massive and detailed evidence nor specifically denied it, the state court of appeal ignored it all and closed the door to having the issues of fact properly, fairly and fully litigated. See my: *Studies in questioned documents, Number Two: In the exercise of ignorance: Replies to the critics of handwriting expertise*. Second, enlarged edition, San Francisco, CA, Handwriting Experts of California, 2000. Appendix A has a critical analysis of the theoretical and methodological inadequacies of prosecution handwriting experts in the Federal criminal trial

The other trial expert for the government was Dr. Duane Dillon. He testified to spending six hours at the J. F. Kennedy Presidential Library where he claimed to have verified 35 forged documents. That allows about ten minutes to examine and photograph each of the 35 documents, if he had done nothing else. However, he said that he went through several boxes of documents and claimed to have found new JFK signatures by secretaries. Presumably he also did such things as deal with the staff, set up and later pack equipment, examine documents he concluded were

not forged, take breaks and eat lunch. One becomes skeptical he even spent two or three minutes properly examining each of the alleged 35 forgeries.

The two experts were hired by a government which employs more document examiners than any other entity in the world. Were the government examiners so lacking in competence or were they more likely lacking in accommodation?

206. *U.S. v John Doe*, 2000 U.S. App. LEXIS 7338 (4 Cir 2000); Reported in Table Case Format at: 2000 U.S. App. LEXIS 16627

It was not error for Government handwriting expert to compare passport application to INS document written by defendant. Nor was it error to read to the jury the indictment containing defendant's several aliases.

COMMENTARY: Incidentally, the case title lists six aliases, "Igc" being the least popular with defendant.

207. *U.S. v Jolivet*, 224 F.3d 902, 2000 U.S. App. LEXIS 23613, 55 Fed. R. Evid. Serv. (Callaghan) 670 (8 Cir 2000)

Handwriting evidence is admissible, both as to comparison and identification. Donald Lock was expert for Government, and he was "well qualified." No analysis is given, the Court of Appeals only saying that the District Court did not abuse its discretion in letting him in.

COMMENTARY: A clear and unambiguous ruling. Another relevant case that the critics never seem to know about or, knowing about, never seem to feel a balanced and academically honest discussion requires disclosure of all pertinent cases, pro or con. That is why I include every case I can find, whichever direction it went.

208. *U.S. v Kesop and Umeokafor*, 2000 U.S. App. LEXIS 789 (6 Cir 2000); Reported in Table Case Format at: 2000 U.S. App. LEXIS 8036

Handwriting expert testified defendant Umeokafor's handwriting was on packages of counterfeit currency.

COMMENTARY: A case of routine admissibility.

209. *U.S. v Mann*, 2000 U.S. App. LEXIS 6673 (8 Cir 2000)

Mann was convicted of writing a threatening letter to the President. He addressed threatening letters from the prison where he was and signed "Chuck Mann." A handwriting expert identified Mann had handprinted three threatening letters to judges and also the envelopes.

COMMENTARY: A case of routine admissibility, but in this case expert evidence as to identification of handprinting is properly admitted. It might also be a routine case of criminality by stupidity, given the defendant's self-identification in the letters and that he wrote to two other prisoners about plans to escape and their hatred for the President.

210. *U.S. v Perez*, 217 F.3d 323, 2000 U.S. App. LEXIS 15120, 55 Fed R Evi Serv (Callaghan) 151 (5 Cir 2000); 2000 U.S. LEXIS 7279 (US 2000)

Affirming a conviction for aiding and abetting the harboring of an undocumented alien. A notebook "indicative of an alien smuggling operation" was found pursuant to a search warrant.

Footnote 4 states: "The government's expert testified that the writing in the notebook matched Perez's handwriting."

COMMENTARY: A case of routine admissibility.

211. *U.S. v Santillan*, 1999 U.S. Dist. LEXIS 21611 (D.C. Northern Dist. CA 1999); 243 F.3d 1125 (9 Cir 2000)

In District Court, defendant moved for exclusion of Susan Morton's testimony because of failure to disclose as required and failure to meet *Daubert/Kumho* criteria. After two defense letters of request, Government's opposition to defendant's *in limine* motion included Morton's qualifications and bases for her opinion. That last minute, forced compliance was fine with the Court. As to the *Daubert/Kumho* challenge, the Court said that the Government's answer of past admissibility is now beside the point. As to Kam's study, the criticisms of Risinger, *et al.*, were more persuasive to the District Court, while Kam apparently refused to disclose individual performance data. So the District Court "split the baby." The Ninth Circuit's decision, 243 F.3d 1125 (9 Cir 2000), did not address this issue.

COMMENTARY: I believe it is standard not to disclose data on individual subjects in a research study. Subjects may be identified by some code, but it would seem to be unethical to disclose an individual's personal identity and data. When reported cases mention Government violation of the rules, there is hardly ever a sanction, and often there is positive reward, which is hardly a fair and equal treatment of all parties. Though the anti-expert experts are nitpickers when writings go against their opinion and uncritical when they go with their opinion, the Kam studies are flawed more fundamentally than the critics say they are. One, they start with the two purported "principles" of everyone writing differently both from others and from oneself. Two, they buy into the same faulted notion of science that the critics and *Daubert* hold to.

212. *U.S. v Smith and Tyree*, 231 F.3d 800, 2000 U.S. App. LEXIS 26814, 55 Fed. R. Evid. Serv. (Callaghan) 1267, 14 Fla. L. Weekly Fed. C 117 (11 Cir 2000); certiorari denied, 2001 U.S. LEXIS 3591 (US 2001)

Convictions for violation of absentee voter laws were affirmed except for one of 12 counts for Tyree. Larry Nelson, defendants' handwriting expert, testified that someone other than the voter or defendants signed some absentee ballots. "But none of those voters testified that they had not voted the ballot that was cast in their name or authorized someone else to do so." The government handwriting expert testified Tyree signed one voter's name, which cannot be done legally in Alabama even with permission.

A larger issue in the case was that defendants were selectively prosecuted because they were Black and had a particular local political affiliation. With much reasoning, the appeal opinion explains why the fact that others mainly escaped prosecution was not prejudicial, since the others were "not similarly situated" in one way or another.

COMMENTARY: I could not argue with someone who suggests that one's native complexion was at least one of the dissimilar situations.

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213. *U.S. v Wert-Ruiz*, 228 F.3d 250, 2000 U.S. App. LEXIS 23394 (3 Cir 2000)

Conviction for laundering illegal drug money.

At [\*7-8]: “The government presented evidence that Wert-Ruiz and her employees handwrote thousands of fictitious receipts for cash delivered to LAS that was supposedly going to individuals in the Dominican Republic. The government presented expert testimony that Wert-Ruiz attempted to disguise her handwriting in preparing these receipts. Investigators testified that out of a sample of well over one hundred receipts seized from Wert-Ruiz, they had been unable to find a single person identified on any of the receipts, indicating [\*8] that the receipts were false. At trial, Wert-Ruiz testified that she had prepared the forged receipts from actual receipts provided by International Services that purportedly reflected real transactions. These latter receipts were not produced at trial, and the government presented evidence that Wert-Ruiz had never admitted to writing the forged LAS receipts during interviews with law enforcement officials conducted after her arrest but before trial.”

COMMENTARY: A case of routine admissibility with the added virtue that the expert testified as to disguise of handwriting. Rebuttal is permitted to an explanation of innocence because of failure to produce the best evidence of business records to support it and because the explanation was late in the process.

214. *Wallace Hardware Co., Inc., v Abrams and Abrams*, 223 F.3d 382, 2000 U.S. App. LEXIS 18086, 2000 FED App 0250P (6 Cir 2000)

One defendant proffered the opinion of a handwriting expert that his signature on a “Guaranty Agreement” was a forgery.

COMMENTARY: A case of routine admissibility.

## 2001

215. *Angelini v Cowan*, 18 Fed. Appx. 387, 2001 U.S. App. LEXIS 19101 (7 Cir 2001)

Having been convicted of sexual assault in Illinois state court and having exhausted all his appeals, defendant brought *habeas corpus* in Federal district court which denied him relief. The Seventh Circuit affirmed in part, vacated in part, and remanded for further proceedings.

Defendant had been identified by the victim by voice. Part of the investigation is described on page [\*3]: “Police investigators learned that nearly four months earlier the victim’s apartment had been burglarized while she was sleeping. The victim had reported the burglary to the police, and days later told police that she had received harassing phone calls from an anonymous caller with a deep, gravelly voice. The caller told her that he had her purse and pairs of her panties. The victim found her panties on the antennas of cars at her place of employment a few days later. The victim’s name and telephone number were handwritten on the panties. The police still had the panties in its possession and arranged for a handwriting expert to compare the writing on the panties with samples of Angelini’s handwriting obtained in connection with his 1982 conviction. The expert’s comparison was inconclusive, but after obtaining more recent samples, he concluded that it was Angelini’s handwriting on the panties.”

The handwriting expert was called at trial, and the appeal record does not indicate any challenge to his evidence.

COMMENTARY: It is not quite a case of routine admissibility, since the questioned writing was on a most unusual surface. Without knowing whether the “more recent samples” were also on panties or cloth similar to the panties in question, one cannot offer an evaluation of the scientific reliability of the evidence. Certainly this is a case where a good defense trial attorney would offer some challenge, and a good appeal attorney would make the permitting of such testimony a point of error at trial.

216. *Bout v Bolden, et al.*, 22 F.Supp. 2d 646 (E.D. Mich. 1998); affirmed, 225 F.3d 658, 2000 WL 1033043, 2000 U.S. App. LEXIS 17578 (6 Cir 2000); Reported in Table Case Format at: 2000 U.S. App. LEXIS 26538; further appeal, 21 Fed. Appx. 327, 2001 U.S. App. LEXIS 20454 (6 Cir 2001)

22 F.Supp. 2d 646:

Included in his response to the defendants’ motion for summary judgment as to the retaliation claim were four documents purporting to be internal prison memoranda that supported the existence of a conspiracy against him. Summary judgment was granted.

2000 U.S. App. LEXIS 17578:

In a claim for retaliation a prison inmate submitted documents in evidence purportedly signed by one of the defendants who denied the signatures. Leonard Speckin was appointed by the trial court to examine the documents and concluded the signatures in question were false.

2001 U.S. App. LEXIS 20454:

Bout claimed retaliation while serving life sentence for first-degree murder. The memoranda submitted to prove the claim were shown to be forged, so the court struck the retaliation claim in its entirety and charged Bout for the \$5,469.60 in attorney and court-appointed handwriting expert fees.

COMMENTARY: All parties agreed to the appointment of the expert and no objection was raised before the trial court; therefore, objection raised for the first time upon appeal was without merit.

217. *Commonwealth of the Northern Mariana Islands v Bowie*, 2001 U.S. App. LEXIS 4366, 243 F.3d 1109, 82 Empl. Prac. Dec. (CCH) P40,968, 2001 Daily Journal DAR 2947 (9 Cir 2001); amended on denial of rehearing, 2001 U.S. App. LEXIS 4368, 243 F.3d 1109 (9 Cir 2001)

Bowie was convicted of murder and kidnaping. Four witnesses for the government, who had received a good deal from the government, testified against him, but an unsigned letter was obtained by government investigators before trial indicating the four were conspiring to blame Bowie by giving joint perjury. The prosecution did not bother investigating the matter nor have a handwriting expert examine the letter to establish authorship. At trial, when counsel for Bowie’s co-defendant wanted to present expert handwriting evidence that his client did not write the letter, the prosecutor objected and asked for time to conduct his own handwriting examination. He never did up to the time of the appeal. Requesting rehearing on the reversing of conviction and remanding for new trial, the prosecution stated it needed time to have the letter examined by a handwriting expert. The Court of Appeals said that was too little too late. The report at 243 F.3d 1109 is scathing in its assessment of the behavior of the prosecution throughout the case.

COMMENTARY: Though no handwriting expert evidence was presented at trial, the fact that it was not weighed large in the mind of the Court of Appeals as to the trial not being constitutionally fair and just.

218. *Gilmer v. Colorado Institute of Art, et al.*, 12 Fed. Appx. 892, 2001 U.S. App. LEXIS 13743, 2001 Colo J CAR 3273 (10 Cir 2001)

In her suit against the Institute, Gilmer alleged that Dan Swanson had sexually harassed her and offered a letter from him in support. The District Court held a hearing in which handwriting experts for each side testified. The Court found Gilmer “had forged the threat” and struck all claims of harassment by Swanson from the complaint. On appeal, Gilmer alleged that her Seventh Amendment rights had been violated by a pre-trial finding of forgery. However, at pages [\*7] and [\*8] the Court of Appeals says: “We see no problem in the court’s addressing the forgery question itself in the manner in which it did.... Many courts have found the fabrication of evidence to be an abusive litigation practice, or even a type of fraud on the court..... A trial court clearly has the authority to examine the authenticity of evidence before submitting it to a jury. *See generally* Fed. R. Evid. 901. And Gilmer obviously has no right to submit fabricated evidence to the jury.” Several case citations are given in support of these statements.

Defense expert said the threat part of the letter was a tracing, and plaintiff’s expert did not contradict that, even agreeing that the threat part was in a different ink than the rest of the letter. Swanson testified his original letter was three, not two pages, and without marginal writings where the threat was. He said the threat was made of words from his lost third page.

COMMENTARY: The report suggests that both experts were ethical and competent, since they essentially agreed.

219. *Interstate Litho Corp. v Brown, et al.*, 255 F.3d 19, 2001 U.S. App. LEXIS 15094 (1 Cir 2001); 534 U.S. 1066, 122 S. Ct. 666, 151 L. Ed. 2d 580, 2001 U.S. LEXIS 10976, 70 U.S.L.W. 3383 (US 2001)

This is the entire discussion that the report gives to expert handwriting evidence: “At trial, Interstate’s principal claim was that Becker had not signed the purported contract for the sale of the presses. There was a battle of handwriting experts, and the jury rejected Interstate’s suggestion that Becker’s signature had been forged.”

COMMENTARY: It was a case of routine admissibility.

220. *Lacey v Daly*, 26 Fed. Appx. 66, 2001 U.S. App. LEXIS 27405 (2 Cir 2001)

Defendant, a police officer, had probable cause to arrest Lacey based on handwriting analysis by Connecticut State Police Forensic Laboratory, and there was no evidence he had knowledge of anything casting doubt on the analysis. Summary judgment for Daly upheld.

COMMENTARY: There was no testimony, and so *Daubert* factors were not a consideration. However, I include this case as illustrative of many where an expert handwriting opinion can serve as one of the bases for a court’s finding of fact or law.

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221. *Malachinski v Commissioner of Internal Revenue*, 268 F.3d 497; 2001 U.S. App. LEXIS 21453; 2001-2 Tax Cas (CCH) P50, 695 (7 Cir 2001)

At page 501: Malachinski's expert, Diana Marsh, "a board-certified forensic document examiner," failed to include in her report "the facts, data, and analysis that form the basis for an expert's conclusion," and so she was properly not permitted to testify to them. Tax Court Rule 143(f). James Davidson, expert for IRS and also board-certified, said there were not enough exemplars to determine whether the signature in question was genuine. At page 502: "[The Court] accordingly sustained the IRS' objection and restricted Marsh's direct testimony to the material set forth in her written report." Reason for rule is so that opposing party could have fair opportunity to prepare for cross-examination and rebuttal. Considering both experts' testimony, circumstantial evidence and its own examination of the signatures, the Trial Court found the signature in question to be genuine.

COMMENTARY: An expert must be assiduous in finding out the requirements of the rules for expert note-taking, reports, testimony and other aspects of the work. One cannot rely on the attorney/client to provide all such information. The discounting of the expert's opinion for some neglected technicality can come back to haunt the expert, not the attorney/client. See the 2003 Federal *Deputy* case discussed below where the *Malachinski* case came back to haunt Marsh.

222. *U.S. v Battinelli*, 2001 U.S. App. LEXIS 16760, 2 Fed. Appx. 14 (1 Cir 2001); Reported in Table Case Format at: 2001 U.S. App. LEXIS 19869

Secret Service document examiner testified that defendant wrote false information on a loan application.

COMMENTARY: A case of routine admissibility.

223. *U.S. v Cantrell*, 278 F.3d 543, 2001 U.S. App. LEXIS 27021, 2002 FED App. 0032P (6 Cir. 2001)

An FBI document examiner testified that "Cantrell may have prepared" some hand-printing, that there were characteristics in someone else's signature that "were consistent with Cantrell's known writing," and that two persons' signatures "lacked characteristics" in their known signatures.

COMMENTARY: As reported the testimony amounts to insinuation.

224. *U.S. v Elmore*, 56 MJ 533, 2001 CCA LEXIS 259 (US Nvy Mar Cps Ct/Cr Ap, NMCM 99 01013, 2001)

It was not abuse of discretion to deny motion *in limine* to exclude testimony of handwriting expert Marc Jaskolka, who described "handwriting analysis as a learned skill rather than a scientific process." Reasoning in *Ruth* and *Starzecpyzel* cases was adopted to support admissibility of opinion both as to observations and opinion that defendant "may have written" endorsements, numerals and initials on back of stolen postal money orders. "[W]e are convinced that, whether a rigorous Daubert/Kumho Tire analysis is employed, or an older, traditional scrutiny under Mil. R. Evid. 702 is used, expert testimony in the field of handwriting analysis is generally valid and reliable, and may properly be admitted in trials by court-martial."

COMMENTARY: It is ironic that *Starzecpyzel*, the case standing preeminently for exclusion of opinions by handwriting experts, should be cited in support of admissibility of opinions in *Elmore*. The analysis given is quite extensive and in depth.

225. *U.S. v Haley*, 27 Fed. Appx. 705, 2001 U.S. App. LEXIS 23630 (8 Cir 2001)

Among other convictions, defendant had “18 counts of making false entries in a bank’s books and records.” William Storer, a handwriting expert, testified they had been made by Haley.

COMMENTARY: This is a case of routine admissibility.

226. *U.S. v Och*, 16 Fed. Appx. 666, 2001 U.S. App. LEXIS 17077 (9 Cir 2001)

“Och asserts that it was error...for the district court to admit expert testimony of the handwriting examiner, Cunningham, because of the unreliability of the field” or alternatively to permit testimony on authorship and that the expert was unqualified. Additionally, it was error not to give a jury instruction on the shortcomings of the field. Cross-examination on qualifications was limited to authorship of scholarly articles, reliability and scientific bases. Nevertheless, there was no abuse of discretion nor constitutional error.

“We need not and do not decide whether the district court erred in allowing Cunningham’s expert testimony or in instructing the jury because we conclude that any possible error related to the expert testimony was harmless. There was overwhelming evidence [of guilt].” If the expert testimony had been excluded, “the jury would have more than likely convicted....”

COMMENTARY: Again the handwriting expert is a minor and dispensable element of proof. This case provides a new argument why an expert should be admitted in face of a *Daubert* challenge: The expert testimony will be harmless even if an error to let in! However, if the presenting attorney ever thought the proffered expert would be harmless, I doubt the expert would even be considered for a proffer.

227. *U.S. v Salameh, et al.*, 54 F. Supp. 2d 236 (S.D. NY 1999); affirmed, 261 F.3d 271, 2001 U.S. App. LEXIS 17431 (2 Cir 2001); affirming denial of post-trial motions, 16 Fed. Appx. 73, 2001 U.S. App. LEXIS 17685 (2 Cir 2001)

The discussion concerns 54 FS2 236. At pages 297-300 there is a discussion about not calling a handwriting expert, and three are mentioned, Richard Bernstein, Charles Hamilton and Abdel Fattah Riad. The latter two could not match up an unknown writer to an exhibit, and the Court uses a touch of sarcasm to say that that might impress defense people and the New York Times, but it “is entirely unimpressive in a court of law.” Defendant never testified to not writing the manual in question, but the point is he possessed it with intent to use. Defense counsel had gotten court permission to hire a handwriting expert, but defendant said he had written the manual so no one was hired to prove otherwise. Defense counsel in argument “reminded the jury that the government had failed to obtain the testimony of a handwriting expert.”

COMMENTARY: One can reasonably argue that, if the courts considered handwriting expertise unreliable and inadmissible, they would not waste tax payer money permitting indigent defendants to hire handwriting experts. That the experts in this case knew when they could not make an identification underlines their reliability. This case had a very complex history of appeals and hearings which are not at all completely related above.



228. *U.S. v Scott*, 83 F. Supp. 2d 187, 2000 U.S. Dist. LEXIS 561 (D. Mass. 2000); affirmed in part and reversed and remanded in part, 270 F.3d 30, 2001 U.S. App. LEXIS 23417 (1 Cir 2001); certiorari denied, 2002 U.S. LEXIS 2662 (US 2002)

Conviction for bank fraud and making and possessing forged checks was upheld. Three separate identity theft crimes were considered together in an omnibus decision.

Court summary: “(3) opinion testimony of a non-expert witness authenticating or identifying defendant’s handwriting was admissible....”

At 270 F.3d 30, at page 51, discussing objection to using IRS agent as lay witness to authenticate handwriting and thus implying that they had been investigating Scott for a long time, another argument by appellant is considered: “Even if the government might have done better to use an expert witness for the handwriting identification, as Scott argues, and even if another district court might permissibly have excluded the evidence on this basis, the availability of a less prejudicial method of proof is only a factor to be weighed in the Rule 403 inquiry and does not control this case.”

COMMENTARY: Presumably this defense attorney thought handwriting experts reliable and admissible. Or maybe he hoped for an expert against whom he could bring a successful motion to exclude. In any case, the quoted passage from page 51 could be used as consistent with, if not explicitly affirming, reliability. There is an extensive discussion of the two rules, 701 and 901(b)(2), that lay handwriting opinion must satisfy.

229. *U.S. v Spiller*, 261 F.3d 683, 2001 U.S. App. LEXIS 18533, 57 Fed. R. Evid. Serv. (Callaghan) 1343 (7 Cir 2001)

In prosecution for cocaine offences, defense attorney would not stipulate to ledgers found at the site, so at page [\*4]: “The government then used two expert witnesses to explain the ledgers. The first witness, William Storer, a handwriting expert, testified that the ledgers contained similar handwriting to Spiller’s writing samples. Spiller’s attorney did not object to Storer’s testimony.” The second witness interpreted the contents of the ledgers, in what was partly stylistics or linguistics evidence.

COMMENTARY: This is a case of routine admissibility.

230. *U.S. v Taylor*, 253 F.3d 1115, 2001 U.S. App. LEXIS 13484 (8 Cir 2001)

The crime charged involved depositing stolen checks and then writing checks for cash and other items. Taylor contended that admission of the exemplars, from which the handwriting expert had testified at trial, was abuse of discretion. However, Taylor had admitted to writing some of the exemplars for the FBI.

COMMENTARY: A case of routine admissibility.

231. *U.S. v Van Wyk*, 83 FS2 515 (D. NJ 2000); 2001 U.S. App. LEXIS 6290 (3 Cir 2001); certiorari denied, 534 U.S. 826, 122 S. Ct. 66, 151 L. Ed. 2d 33, 2001 U.S. LEXIS 5666, 70 U.S.L.W. 3234 (US 2001)

Although FBI agent James R. Fitzgerald qualified as forensic stylistics expert by attending seminars, teaching, researching, and doing the work, he could not testify as to identify the author of unknown writings since forensic stylistics lacks reliability and has no known rate of error, no

recognized standard, no meaningful peer review, and no accreditation in field. He could, however, testify to similarities between defendant's writings and the threatening communications as an aid to the jury. At page 518 there is an interesting ruling: "The expert need not have complete knowledge about the field in question, need not be certain, and need not be unbiased." The first two items are standard, but the third gives one pause. Nevertheless, an expert may not base opinions on speculation.

At page 521 it is described how Gerald McMenemy's first book was cited by the Government to support reliability, but the Court gives this assessment: "Due, however, to the dearth of published cases or journals addressing forensic stylistics, the novelty of this field, and the fact that it has only been approved by law enforcement, the Court has no way of determining whether the McMenemy article is merely self-legitimized."

COMMENTARY: In his second book, McMenemy dismisses this case as going against his expertise, since the witness supposedly followed Don Foster's methods, which McMenemy said are quite faulted. In a 2003 case in San Diego County, *People v Flinner*, the trial judge ruled McMenemy's expertise inadmissible under California *Kelly/Frye/Leahy* rule because it had no general acceptance, the *Van Wyk* case providing strong argument for that finding. Although nothing in handwriting examination parallels the difficulty that the *Van Wyk* and *Flinner* courts properly recognized in McMenemy's brand of forensic linguistics, *Van Wyk* is often quoted to support inadmissibility of the former, just as *Van Wyk* cites several handwriting cases.

The citation and specific quote from *Flinner*, is: *People v Flinner*, California Superior Court, San Diego County, Case No. SCE 211301 (Motions), Reporter's Transcript of Proceedings, June 30th, 2003, El Cajon, California, before The Honorable Allan J. Preckel. At page 21, lines 17-24, The Court rules: "The motion for reconsideration is granted. The Court has been made aware of no criminal case in California that has allowed the introduction of evidence of forensic linguistics or stylistics. Such evidence, including the testimony of Dr. McMenemy, will not be admitted at this trial without first passing muster consistent with the requirements of the *Kelly* and *Leahy* cases. To date, the requisite showing of reliability has not been made."

## 2002

232. *Afrasiabi v Harvard University, et al.*, 39 Fed. Appx. 620, 2002 U.S. App. LEXIS 13136 (1 Cir 2002); certiorari denied, 538 U.S. 920, 123 S. Ct. 1615, 155 L. Ed. 2d 309, 2003 U.S. LEXIS 2176 (2003)

After criminal charges were dropped against plaintiff as author of an anonymous letter, he brought civil action for having been excluded from Harvard's campus. "Afrasiabi contends that he is entitled to a new trial because the district court erroneously excluded the evidence of his handwriting expert offered on the eighth day of trial to support his contention that he was not the author of the hate letter." However, for his "flouting" the discovery rules and because his expert's report "failed woefully to meet the rule's formal requirements for disclosure," exclusion of the expert was within the District Court's discretion.

COMMENTARY: The attorney is responsible to see that experts fulfill all requirements of the rule, but the fully competent expert is self-supervised in that regard and will specifically ask instructions from the attorney when needed.

233. *Tiller v Baghdady*, 244 F.3d 9, 2001 U.S. App. LEXIS 4254 (1 Cir 2001); 294 F.3d 277, 2002 U.S. App. LEXIS 13039, 53 Fed R Serv 3d (Callaghan) 670 (1 Cir 2002)

The discussion has to do with 2002 U.S. App. LEXIS 13039.

Having lost at trial, in a motion for reconsideration based on fraud by means of a forged signature, Tiller's burden of proof of fraud was clear and convincing. Neither of her two post-trial handwriting experts, Pauline Patchis and Charles Shure, ever testified in the case, but the Court of Appeals bases its decision in part on their reports. The Court of Appeals assesses the experts' assurance in these words: "Both experts expressed only a preliminary opinion that it was 'probable' that the signatures on the Haddad Power of Attorney and the 1977 letter were forged. Both made clear that they could not render conclusive findings on the materials Tiller provided them." She never provided what they further requested. The Court ruled that "probable" did not equate to "clear and convincing." Besides, Tiller's own witness at trial contradicted the post-trial experts' reports, stating that the writings were genuine.

COMMENTARY: One might consider the Court's reliance on the experts' reports in two ways. First, the reports were inherently reliable. Second, whether reliable or not they were Tiller's own offerings and so were weighed against her interests. Thus, while not a case of admissibility, it does support the validity of handwriting terminology for levels of certitude but not its parallel to levels of proof at trial. There is more detailed discussion of the handwriting issues which is worth the reading.

234. *U.S. v Cole*, 293 F.3d 153, 2002 U.S. App. LEXIS 10788 (4 Cir 2002); cert. denied, *Cole v U.S.*, 2002 U.S. LEXIS 7637 (2002)

Defendant's handwriting expert "seriously impugned" turn-coat witness's testimony against him. That the prosecutor kept turn-coat's psychiatric history from defense counsel until after Government's direct case was not commendable but did not violate due process.

COMMENTARY: The jury seemed to believe everything the turn-coat said even when he had been shown to lie and after he had said he testified in hopes of a good deal from the Government.

235. *U.S. v Copeland and Hartwell*, 304 F.3d 533, 2002 U.S. App. LEXIS 18492, 2002 FED App. 0311P (6 Cir. 2002); Opinion withdrawn: *United States v. Copeland*, 2003 U.S. App. LEXIS 2382 (6 Cir. 2003); opinion amended, 321 F.3d 582, 2003 U.S. App. LEXIS 3365, 2003 FED App. 0061A (6th Cir.), 61 Fed. R. Evid. Serv. (Callaghan) 231 (6 Cir. 2003); rehearing, en banc, denied by *United States v. Hartwell*, 2003 U.S. App. LEXIS 8418 (6th Cir., Apr. 17, 2003); post-conviction relief denied at *Hartwell v. United States*, 2005 U.S. Dist. LEXIS 38417 (E.D. Mich., Dec. 20, 2005)

Detective Michelle Dunkerley, a forensic document examiner, testified at trial that what appeared to be drug tabulations were likely made by Hartwell.

COMMENTARY: A case of routine admissibility.

236. *U.S. v Giorgies*, 29 Fed. Appx. 472, 2002 U.S. App. LEXIS 1024 (9 Cir, No. 01-10047, 2002); certiorari denied in *Giorgies v U.S.*, 535 US 1087, 122 S. Ct. 1982, 152 L. Ed. 2d 1039, 2002 U.S. LEXIS 3742, 70 U.S.L.W. 3708 (2002)

"The expert testimony on handwriting did not play a significant role, in that the jury was

provided with handwriting examples allowing them to make independent assessment.”

COMMENTARY: Once more we handwriting experts are not really all that important in the greater scheme of things.

237. *U.S. v Hernandez*, Tenth Circuit, June 19, 2002, No. 01-1194 (D.C. No. 99-CR-75-N, District of Colorado), 42 Fed Appdx 173, 2002 U.S. App. LEXIS 12153, 89 AFTR 2d (RIA) 3049

Conviction was upheld for making and for aiding and abetting the making of false claims against the United States. Sole issue on appeal was whether District Court abused its discretion in allowing handwriting identification. “Believing that the district court in so doing did not abuse its discretion, we affirm.” After a *Daubert* hearing the District Court ruled that Joseph Mongelluzzo was qualified as an expert on questioned documents but was restricted to “identifying the physical mechanics and characteristics of handwriting and then pointing out similarities....” He could not say defendant wrote the tax documents in question nor even that they had a common authorship. The Government did not appeal the partial exclusion. The District Court’s memorandum and order “considered all aspects of *Daubert* and *Kumho*, and then issued its Solomonian order which apparently pleased and displeased both parties!”

COMMENTARY: Details of the *in limine* testimony are not given so the case report must be taken on face value. However, it seems that the Government never appeals the restrictions placed on its handwriting expert witnesses, which makes one suspect federal prosecutors do not consider them worth the bother, a most unfortunate and self-defeating attitude if it be so.

238. *U.S. v Johnson*, 2002 WL 44242, 30 Fed. Appx. 685, 2002 U.S. App. LEXIS 525 (9 Cir 2002); certiorari denied, 537 U.S. 1241, 123 S. Ct. 1374, 155 L. Ed. 2d 213, 2003 U.S. LEXIS 1889, 71 U.S.L.W. 3567 (US 2003)

The admissibility of handwriting expert identification of defendant’s handwriting on I-94 forms is affirmed as not being abuse of judicial discretion.

COMMENTARY: In this as in *Giorgies*, the Federal Supreme Court denied *certiorari*, which, as far as I know, is the closest we have come to having a Supreme Court ruling on the post-*Daubert* admissibility of handwriting expertise.

239. *U.S. v Kehoe*, 2002 U.S. App. LEXIS 23201; 59 Fed R Serv 3d (Callaghan) 812; 310 F2 579 (8 Cir 2002); rehearing denied, 2003 U.S. App. LEXIS 361 (8 Cir 2003); certiorari denied, *Kehoe v U.S.*, 2003 U.S. LEXIS 3938 (2003)

Carl McClary was handwriting expert for the Government. At page 593: “The district court did not abuse its discretion in finding McClary’s testimony to be reliable.” No analysis is offered.

COMMENTARY: Since it goes against their staunchly held position, no doubt the anti-expert experts will assert this case is to be ignored since there is no explanation why the admissible is admissible, although obviously it was because both the Trial Court and the Court of Appeals considered the requirements of the Rules and of *Daubert* satisfied.

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240. *U.S. v Mooney*, 315 F.3d 54, 2002 U.S. App. LEXIS 27130, 60 Fed R Evid Serv (Callaghan) 60 (1 Cir 2002)

At page 61, *et seq.*, in section titled “III. EXPERT TESTIMONY,” Court of Appeals upholds admissibility of expert handwriting testimony after *Daubert* hearing both as to observations and as to conclusion of authorship. At page 62: “Finding the *Daubert* factors relevant to his evaluation of the reliability of the expert’s testimony, the judge noted that all the factors were met in this case.” At page 63: “The defendant, however, misunderstands *Daubert* to demand unassailable expert testimony. As we previously explained, ‘*Daubert* does not require that the party who proffers expert testimony carry the burden of proving to the judge that the expert’s assessment of the situation is correct.... It demands only that the proponent of the evidence show that the expert’s conclusion has been arrived at as a scientifically sound and methodologically reliable fashion.’ *Ruiz-Troche v. Pepsi Cola of P.R. Bottling Co.*, 161 F.3d 77, 85 (1st Cir. 1998).”

And also at page 63: “The *Hines* opinion, of course, has no binding effect.” This is in reference to *U.S. v Hines*, 55 F. Supp. 2d 62 (D. MA 1999), which was discussed previously.

COMMENTARY: Unfortunately, the handwriting expert who did so well is not named. The opinion provides a very sensible interpretation of *Daubert/Kumho*, one that I believe is the correct one, the one that makes most sense from a reading of those cases.

241. *U.S. v Nadurath*, 2002 U.S. Dist LEXIS 8777, 2002 WL 1000929 (N.D. Tex. 2002)

Defendant’s objections to admission of fingerprint and handwriting expert testimony are overruled and motions for *in limine* hearing for both denied. Defendant failed to provide any information calling reliability into question.

A source refers to this case in this way: “Although there was apparently overwhelming evidence from multiple sources that defendant Lewis had sent the envelopes in question, the prosecution desired to gild this lily with the testimony of John W. Cawley, a ‘questioned documents analyst’ so certified by the US Postal Inspection Service after training....”

COMMENTARY: No analysis is given, but, contrary to the insinuation of the critics when they discuss a ruling is contrary to their liking, that does not indicate that the Court gave inadequate consideration to the matter, much less ruled incorrectly. On the other hand, victory came to the prosecution and its expert through basic bungling by the defense who failed to give any good reason for the challenge.

242. *U.S. v Pinson*, U.S. Court of Appeals for the Armed Forces, Crim App. No. 32963, June 19, 2002

Defendant claimed that handwriting exemplars seized and used in comparisons were privileged. All but two were ruled by trial judge as not privileged, and as to the remaining two, the military judge found “that to the extent P27 and P28 might at one time [have] been protected by M.R.E. 502, their contents have been fully disclosed in communications to others, including those communications in [Appellate Exhibit (App Ex)] XXV [Memorandum for Convening Authority (8 AF/CC) dated Mar. 18, 1996], App Ex XXVII [Congressional Complaint dated Nov. 16, 1996], and App Ex XXVIII [Memorandum for 85th Group Inspector General dated July 5, 1996]. Moreover, none of the material contained in P27 and P28 was susceptible to being used

directly or indirectly against the accused on the charges in this case. Moreover, the questioned documents examiner testified that those items were not necessary for his conclusion, and disregarding them would not affect the certitude of his opinion. Finally, the court rules as a matter of law that mere comparison of the physical appearance of the accused's lawfully seized handwriting is not -- in this case -- within the protection of the attorney client privilege."

COMMENTARY: In a case of routine admissibility, the issue of privileged materials is considered. The examiner wisely developed an opinion that did not depend on the disputed exemplars.

243. *U.S. v Weaver*, 350 US Ap DC 121, 281 F.3d 228, 2002 U.S. App. LEXIS 2886 (Cir DC 2002)

Conviction for misappropriation of postal funds in which "a handwriting expert testified that Weaver signed or marked the deposit slips for many of the checks corresponding to ledger gaps...."

COMMENTARY: A case of routine admissibility.

244. *U.S. v Westmoreland*, 340 F.3d 618, 2001 U.S. App. LEXIS 2295 (7 Cir Ill. 2001); 312 F.3d 302, 2002 U.S. App. LEXIS 24455, 59 Fed. R. Evid. Serv. 3d (Callaghan) 1186 (7 Cir 2002); cert. denied, 155 L.Ed.2d 1077, 123 S.Ct. 2094, 2003 U.S. LEXIS 3844 (U.S. 2003)

In harmless error, a letter was admitted at trial. Footnote 5 states: "Moreover, expert testimony on the issue of the letter's authenticity appears to have been collateral to Bronnie Matthews' testimony that she was not the letter's author. Allowing a handwriting expert to corroborate her testimony was impermissible under Rule 608(b). Rule 608(b) provides that 'specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility...may not be proved by extrinsic evidence.' *Id.*"

COMMENTARY: Just because expert testimony is found by a trial court to be inadmissible or its admission is found by a court of appeal to have been error is not necessarily related to its reliability. We must ascertain the rule behind the finding before drawing conclusions. Additionally, we must guard against accepting the opinion of others who unwittingly interpret every ruling of inadmissibility as a stain on the expert witness or on the discipline.

245. *Young v City of St. Charles, et al.*, 244 F.3d 623, 143 Lab Cas (CCH) P59,194, 2001 U.S. App. LEXIS 4552 (8 Cir 2001); affirming dismissal of second suit, 34 Fed. Appx. 245, 2002 U.S. App. LEXIS 8898 (8 Cir 2002); certiorari denied, 537 U.S. 1035, 123 S. Ct. 553, 154 L. Ed. 2d 454, 2002 U.S. LEXIS 8573, 71 U.S.L.W. 3351 (US 2002)

Young filed suit over his dismissal as a police officer, and the District Court granted motion to dismiss his suit. Upon appeal by Young, Eighth Circuit upheld granting the motion to dismiss the suit. Young had submitted copies of forms during the original hearing process on his dismissal. He was accused of submitting falsified documents, and a report by a handwriting expert was part of the basis for Young's dismissal. In his appeal "Young also alleges that the handwriting expert was not qualified under the standards set forth in *Daubert*...." This issue was not specifically addressed any further, but the appeal was denied and the dismissal of Young's suit by the District Court affirmed.

COMMENTARY: In order to give an authoritative opinion, a court of law need not always give all the details of why and wherefor. Most case reports simply give the final word on the matter, and often do not even state the specific decision, as when an appeal court will say it finds no merit in the appellant's other points of error.

Document examiners will find an element in this case all too familiar in their practice. The police officials said Young submitted only copies of the requested forms that were found to be false, but he later contended that he had produced originals and that they had lost them, failing to follow proper chain-of-custody practice in submitting them to the handwriting expert. Nor did the Court of Appeals bother explaining why that contention was unconvincing.

## 2003

246. *Boule v Hutton et al.*, 70 Fed. Sup.2d 378, 1999 US Dist LEXIS 15731 (SD N.Y. 1999); 138 Fed. Sup.2d 491, 2001 US Dist LEXIS 3654 (SD N.Y. 2001); 170 Fed. Sup.2d 441, 2001 US Dist LEXIS 18162 (SD N.Y. 2001); affirmed in part, vacated and remanded in part, 2001 328 Fed.3d 84, 2003 U.S. App. LEXIS 7734, 66 USPQ2d 2d (BNA) 1659, 2003-2 Trade Cas (CCH) P74,095, 31 Media L Rep 1793 (2 Cir 2003); as corrected, judgment entered, 2004 US Dist LEXIS 9836 (SD N.Y. 2004)

The argument was over the authenticity of works of art. At \*21: "The competing technical expert agreed that there were no anachronistic elements in the paper used for the Paintings, but disagreed regarding the inks. It was not clear error to find this and the other evidence presented at trial in equipoise."

There is extensive discussion of New York's *Lanham Act* regarding commercial defamation, since suit was brought under the *Lanham Act*.

COMMENTARY: I include this case as another example of how various kinds of expertise used in document examination are routinely used in other fields. Signature identification, paper and ink analysis, as well as many tools such as ultra violet light are commonly employed in the day-to-day duties of art experts. The critics of document examination are simply and inexcusably mistaken when asserting courts of law are "the only customers" for forensic document examination, specifically handwriting expertise. Andrew Sulner testified for plaintiff, but the substance of his testimony is not indicated. Mr. Sulner is a member of Jurisprudence Section of AAFS. His mother authored the excellent and still worthy text, *Disputed Documents; New Methods for Examining Questioned Documents*, 1966, Oceana Publications, Inc.

247. *Bramblett v Commonwealth*, 257 Va. 263, 513 SE2 400, 1999 Va. LEXIS 47 (1999); affirmed in part and dismissed in part, *Bramblett v True*, 59 Fed. Appx. 1, 2003 U.S. App. LEXIS 220 (4 Cir 2003); stay of execution of death sentence denied, certiorari to Court of Appeals denied, 155 L.Ed.2d 533, 123 S.Ct. 1780, 2003 U.S. LEXIS 2916 (2003)  
2003 U.S. App. LEXIS 220:

At [\*7-8], the prosecution's document expert, Gordon Menzies, testified he "was unable to make a positive match. The prosecution argued, based on other testimony by Menzies, that Menzies was unable to positively identify Teresa's handwriting because she had been under some kind of duress or stress when she wrote the notes. In addition, Menzies found an indented writing



on one of the notes and testified that the writing, which was addressed to Bramblett's sons, was very likely written by Bramblett."

COMMENTARY: Apparently Menzies made an EDD study of the documents and also understood the effects of stress or duress on handwriting. The latter enjoys scientific support in the medical literature.

248. *Colon and R. K. Grace & Company of Puerto Rico, Inc., v R. K. Grace & Company and Kaweske*, 358 F.3d 1, 2003 U.S. App. LEXIS 25910 (1 Cir. 2003)

"As to the January 1997 agreement, Colon [\*4] denied that he had signed it. When a version purportedly bearing his signature was produced by defendants, Colon said (backed by a document examiner) that the signature was not his and asked the district court to exclude it from consideration."

COMMENTARY: This may be the most succinct report of testimony by a handwriting expert in all of case law. Still, as another case of routine admissibility, it supports general acceptance of the reliability of the expertise by the courts.

249. *Deputy v Lehman Brothers, Inc.*, D.C., Eastern District of Wisconsin, No. 02 C 718; reversed and remanded, Court of Appeals, Seventh Circuit, Nos. 02-4305 & 03-1155 (2003); 345 F.3d 494; 2003 U.S. App. LEXIS 19952; 62 Fed. R. Evid. Serv. (Callaghan) 965 (7 Cir 2003)

There is extensive review of what happened in the District Court. In a hearing on a motion to dismiss, Lehman Brothers called Diana Marsh who was member of WADE, IAQDE and ABFE. Responding "no" to trial judge's question as to whether a court had refused to accept her as an expert witness, the judge then asked about *Malachinski v Commissioner of Internal Revenue*, 268 F.3d 497; 2001 U.S. App. LEXIS 21453; 2001-2 Tax Cas (CCH) P50, 695 (7 Cir 2001), which was discussed previously. Eventually the judge said she lacked candor since that court had rejected her expert report.

In *Deputy* she had first seen copies and gave a qualified opinion, then saw originals and gave an unqualified opinion, describing what observations she had made. She said "yes" when the judge asked if her work was a science. Asked by the judge to give principles she relied on, she was less than clear and precise, except when saying at pages 11-12 "that there are no particular number of points of comparison [to make an identification]. Rather, as an expert, Marsh explained, she must determine if there is a fundamental difference because 'in order to determine that two signatures were not written by the same individual you only need one fundamental difference.'"

The trial judge rejected the testimony because she failed to say a previous court had rejected her, and he ruled that her testimony was not admissible; then he proceeded to render summary judgment. In the written opinion, the judge gave seven reasons for rejecting Marsh. The Court of Appeal rejects all seven since in that hearing the trial judge was only to rule on admissibility but instead ruled on credibility and made a finding of fact.

At page 20: "At the hearing, however, Marsh explained that the inconsistency was merely a typographical error.... A typographical error appearing in an expert report might lead a fact-finder to conclude that the expert is sloppy, but it does not render an expert's opinion unreliable and thus inadmissible." The trial judge had mischaracterized several points about Marsh's testimony,



such as saying she had not asked to see originals. The District Court also asked the wrong questions. For example, when the District Court found problems with her change of opinion after seeing a second exemplar signature, the Court of Appeals said that had to do with credibility and concluded: “Thus, the district court’s inquiry should have been on whether professionals in the field of handwriting analysis agree that the addition of a second sample allows for a conclusion as to the validity of the signature at issue. The only testimony before the district court was Marsh’s....”

The Seventh Circuit had issued the *Malachinski* opinion, and so its *Deputy* opinion takes issue with the District Court’s misreading of that former opinion. Marsh had not been rejected as an expert witness, but her testimony had been restricted to what was in her report. At page 24: “By incorrectly focusing on *Malachinski* and other issues relating to credibility, the district court did not properly assess whether handwriting analysis in general, or Marsh’s expert opinion in particular, is admissible under Rule 702. Therefore, we must reverse....” The District Court was to hold a proper hearing on admissibility.

COMMENTARY: Without a ruling on Marsh’s reliability, this case report is an object lesson in how best experts can prepare for a *Daubert* hearing. One is best advised to review one’s report for mistakes, to have clear explanations ready for all aspects of one’s work, including theory, method and equipment, and to master the professional references which support one’s work. In many cases reviewed herein, handwriting experts can neither explain clearly what they are doing and why nor set forth the published texts supporting it all. If Lehman Brothers had not had the wherewithal to appeal the District Court’s incorrect findings and rulings, Marsh would have had a flawed ruling stand as the final word on her reliability and credibility. And that prospect is a strong motivation for an expert to do exemplary work on every case.

250. *Dia v Ashcroft*, 2003 U.S. App. LEXIS 25901, 353 F.3d 228 (3 Cir 2003)

At [\*38]: “Because Dia’s credibility was the basis on which the IJ [Immigration Judge] rested her decision to deny relief, the sole issue before us is that credibility determination.” The decision was vacated and the case remanded to Board of Immigration Appeals. Dia’s handwriting expert was McNally.

At [\*78] *et seq.*: “The IJ explained her rejection of McNally’s testimony that the signatures on the passport and visa were not Dia’s, by opining that handwriting analysis is too uncertain to accord it much weight. This outright rejection of McNally’s testimony was unfounded. McNally’s expertise was unchallenged. McNally was trained by and worked for the U.S. government, has testified as an expert in various courts more than one hundred times, and belongs to two relevant professional societies, one of which has officially certified him an examiner of questioned documents. In his testimony, he clearly concluded that the signatures on the passport and visa were not Dia’s, thus lending support to Dia’s story. McNally only qualified this conclusion by noting that he preferred to use original documents (some of the documents he had examined were not originals), and by conceding that “anything is possible” with regard to signatures.

“The IJ supported her conclusion that handwriting analysis is not probative evidence by referring to United States v. Van Wyk. 83 F. SUDD. 2d 515 (D. N.J. 1997). [\*79] However, Van Wyck (sic) does not stand for this proposition, but, instead, deals with the admissibility of a

forensic stylistics expert's testimony under the Federal Rules of Evidence. Evidence presented in an immigration hearing needs to be 'fair,' 'reliable,' and 'trustworthy,' not necessarily admissible in federal court. Ezeagwuna, 325 F.3d at 405. More importantly, we have found that 'expert testimony as to the similarities in handwriting is generally admissible' in federal court, United States v. McGlory, 968 F.2d 309, 346 (3d Cir. 1992), and McNally's *curriculum vitae* lists dozens of courts in which he has testified as an expert. Therefore, for this reason as well, the chief reason articulated by the IJ for her rejection of Dia's testimony on this count—her conclusion that these were Dia's authentic documents—is not supported by coherent reasoning or by record evidence.”

COMMENTARY: Without ruling on the correctness of the handwriting expert's opinion, the Court of Appeals rules that it was reliable and ought not have been dismissed out of hand as inherently unreliable. Though immigration courts have more relaxed rules of admissibility than Federal District Courts, one ought still meet the highest standards in order to be on the safe side and provide the client with the most cogent testimony possible. The *Van Wyk* case once more is interpreted as being a rejection of handwriting expertise. That the Court of Appeals notes this is an incorrect interpretation can be referred to when we are faced with the same fallacious argument.

251. *Gaydar and Stepanov v Sociedad Instituto Gineco-Quirurgico y Planficacion Familiar, et al.*, 345 F.3d 15, 2003 U.S. App. LEXIS 19947, 62 Fed R Evid Serv (Callaghan) 722 (1 Cir 2003)

An abortion went wrong for the mother and suit was brought. Footnote 1 gives a sterilized description of the procedure employed by saying a tube attached to a suction machine is inserted into the uterus, “after which the contents of the uterus are emptied into the tube.” Plaintiffs prevailed, and the jury reward was affirmed. The fourth and last point of error was that a physician testified to alteration of medical records and he was not “a calligraphy expert.” However, such expertise is not needed to recognize handwriting by two different persons, and the witness was expert in the proper way to alter or modify medical records.

COMMENTARY: There is a lot else in questioned document examination for which no specialized training is needed, while nothing in the field is beyond the ability of most intelligent and industrious adults to learn by assiduous self-study and self-application. That highly touted training courses and apprenticeships are not productive of inerrant experts is shown by how regularly, and at times how readily, members of the profession testify to contrary opinions. Indeed, historically many of the greatest experts in American document examination were self-taught.

Every abortion goes wrong for the human fetus, legally classified as a non-human. Its little heart beating, brain functioning, little hands grasping and tiny toes twitching, but being far too young to vote, demonstrate, or donate to political causes, we grant the helpless being no constitutional protection.

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252. *Hall v Director of Corrections; California State Attorney General*, 2003 U.S. App. LEXIS 18501, 343 F.3d 976, 2003 Cal. Daily Op. Service 8169, 2003 Daily Journal DAR 10208 (9 Cir 2003)

Hall was convicted of murder based on his confession and on two documents from a jail house informant, Cornelius Lee, there being no physical evidence against him. The documents were admitted into evidence without the informant's testimony to authenticate them. In a post-conviction evidential hearing, expert testimony for both prosecution and defendant confirmed erasures on the documents, which purportedly reported questions from the informant and answers by Hall, each taking turns to write. Lee testified he would rewrite the question after Hall wrote his answer. Hall's expert testified to erasures, disturbances of fiber and overwriting. The trial court, holding that Lee's testimony was not credible, "except to the extent that it is supported by scientific evidence" [note 7], ordered a new trial, but this was reversed by California Court of Appeals. All further state actions by Hall were to no avail. The Ninth Circuit reversed the conviction and ordered an unconditional writ of *habeas corpus* unless a new trial was granted within 120 days.

COMMENTARY: The handwriting expertise to detect overwriting by Lee combined with other expertise to present what the trial court characterized as "scientific evidence." The handwriting and document expert evidence was a significant factor in granting the reversal.

253. *Learning Curve Toys, L.P., v PlayWood Toys, Inc.*, 2000 US Dist LEXIS 5135 (N.D. IL 2000); 2002 US Dist LEXIS 4295; *Learning Curve Toys, Inc., v PlayWood Toys, Inc.*, 2003 U.S. App. LEXIS 16847; 342 F.3d 714; 67 USPQ 2d (BNA) 1801 (7 Cir 2003)

DISTRICT COURT 2000:

District Court denied PlayWood's motion to reconsider suppression of testimony by Albert H. Lyter, III, that ink testing showed one portion of a document was written at least six months after the rest of the document. There had been no scientific support for Lyter's relative age analysis through comparative percentage extraction. Older inks were said to extract slower and less than newer inks, but the literature showed that at times the process was reversed. The Court said that PlayWood's attempts to make up for prior deficiency only gave further support to the Court's ruling.

SEVENTH CIRCUIT:

Several issues are considered, resulting in remand for PlayWood. Jury's finding in its favor to be restored and hearing held on exemplary damages and attorney's fees. However, in note 10 the Court of Appeals declined to consider suppression of Lyter's testimony because PlayWood failed to include the transcript for the suppression hearing and did not cure the omission though it had ample opportunity.

COMMENTARY: The District Court's decision on ink analysis is instructive on how to challenge such evidence and on what one must do to support its reliability. There was no consideration of expertise in handwriting, but the case came up as one having to do with *Daubert* standards not being met by handwriting analysis. Again, this cautions us not to take analyses of what cases say on blind faith but to check them out ourselves. I trust my readers will verify both my summaries and my commentaries against the original texts of these cases before relying on them as authority for a specific issue. I do not recommend your relying on my views alone.

254. *Mayo v Ashcroft*, 317 F.3d 867, 2003 U.S. App. LEXIS 1227 (8 Cir 2003)

In a first hearing in immigration court, Mayo was found excludable. An appeal followed, eventually to the Eight Circuit that remanded. In the second of hearings before a different judge, the issue was whether Mayo had married in the Philippines. An affidavit purportedly by the mayor of her town said he had married her after issuing a license. Mayo claimed the mayor's signature was forged. An affidavit verifying the signature also purportedly came from the mayor, which Mayo also said was forged. Handwriting experts for Mayo testified against the authenticity of the signatures, and experts for INS said one could not tell. After ten years in limbo, the Eighth Circuit, finding no valid marriage had taken place, said that Mayo could stay here.

COMMENTARY: A case of routine admissibility.

255. *McElwee v Immigration and Naturalization Service*, 48 Fed. Appx. 716, 2003 U.S. App. LEXIS 20795 (10 Cir 2003)

In summary, if McElwee had been married in the Philippines as documents submitted by INS indicated, she was deportable for having lied about her marital status and because her current marriage was void. She denied the former marriage, but the judge ruled against her. She obtained a handwriting expert who said of her signatures on the documents that it was "highly probable" she had not signed. However, failure of her first attorney did not prejudice her because the immigration judge, considering her expert's opinion the second time around, nevertheless found her signatures on the documents to look like hers and took into consideration other evidence in ruling against her.

COMMENTARY: A case of routine admissibility, but one that reminds us the expert handwriting opinion most often cannot carry the entire burden of proof.

256. *U.S. v Alli*, 2003 U.S. App. LEXIS 19526, 344 F.3d 1002, 92 A.F.T.R.2d (RIA) 6163, 62 Fed. R. Evid. Serv. (Callaghan) 647 (9 Cir 2003)

The testimony of the government's handwriting expert was part of the "ample evidence" for conviction. The prosecutor failed to correct false testimony by two government witnesses, but despite that the conviction "must" be affirmed.

COMMENTARY: A case of routine admissibility and, for some prosecutors at least, routine reliance on perjury.

257. *U.S. v Anderson, et al.*, 353 Fed.3d 490, 2003 U.S. App. LEXIS 26117, 2003 FED App. 0455P, 92 AFTR2 (RIA) 7396 (6 Cir 2003); cert. denied, *Anderson v U.S.*, 2004 U.S. LEXIS 3778 (US 2004)

Affirming conviction of 14 defendants on 73-count indictment. After being found in contempt of court, defendants gave handwriting exemplars to the grand jury. The scheme involved issuing false "sight drafts" and IRS Forms 8300, those used to report transactions of \$10,000 or more. One defendant relied on the testimony of the Government's document examiner that he could not be identified as having signed a false document. However, he was identified as having filled it out. Another defendant relied on having been only identified as "probable preparer" of false Forms 8300.

Read the report for full description of the scheme and the mantra that would protect one

against prosecution.

COMMENTARY: The mantra did not work too well.

258. *U.S. v Ayeni*, 245 FS2 145, 2003 US Dist LEXIS 2611 (D DC 2003); reversed and remanded, 374 F.3d 1313, 2004 U.S. App. LEXIS 14907 (Cir DC 2003)

After first trial on charges of “committing and conspiring to commit fraud and theft from programs receiving federal funds” ended in hung jury, at second trial, among other witnesses, Government presented “a handwriting expert who compared signatures on the vouchers with Robinson’s and Ayeni’s signatures.” During deliberations the jury sent two questions out regarding the evidence about the signatures. The Judge, over defense objections, permitted supplemental arguments. That was the grounds for reversal and remand.

The prosecutor during the supplemental argument said the expert could not be certain because some signatures had been made in an automobile, a thing never mentioned during trial, even by the expert. The concurring opinion states that on direct examination the expert, Ms. King, was certain Ayeni had made the signatures in question but on cross-examination conceded what in effect was reasonable doubt.

COMMENTARY: It seems this is a case that illustrates that, although the theory and method of expert evidence might be reliable enough to be admissible, the opinion itself can turn out to be insufficiently reliable. The lesson is that before trial the expert must cover all weak points in the opinion.

259. *U.S. v Badmus*, 325 F.3d 133, 2003 U.S. App. LEXIS 5919 (2 Cir 2003)

Defendant’s conviction for attempted possession of false identification documents and related crimes was affirmed. At page [\*8]: “The government’s handwriting analyst testified that the documents all had Mr. Badmus’s handwriting on them.”

COMMENTARY: A case of routine admissibility.

260. *U.S. v Crisp*, 324 F.3d 261; 2003 U.S. App. LEXIS 6021, 60 Fed R Evi Serv (Callaghan) 1486 (4 Cir 2003); cert. denied, *Crisp v U.S.*, 157 L.Ed.2d 159, 121 S.Ct. 220, 2003 U.S. LEXIS 6388 (US 2003)

Conviction for bank robbery was affirmed. Fingerprint and handwriting identification was challenged on appeal on basis of abuse of discretion in admitting it, asserting that neither met *Daubert* factors other than general acceptance. Fingerprint cases are often cited in support of challenges to handwriting expertise and *vice versa*.

While in jail, Crisp tried to pass a note to an accomplice, saying what story he should give about the robbery. Thomas Currin, handwriting expert, identified Crisp as writer of the note. At page 268: “The *Daubert* decision, in adding four new factors to the traditional ‘general acceptance’ standard for expert testimony, effectively opened the courts to a broader range of opinion evidence than was previously admissible. Although *Daubert* attempted to ensure that courts screen out ‘junk science,’ it also enabled the courts to entertain new and less conventional forms of expertise.”

At page 270 begins consideration of handwriting, with the sadly epidemic idea that no two people write exactly alike and thus experts can identify a writer. “In addition, he [Crisp] asserts

that handwriting experts have no numerical standards to govern their analyses and that they have not subjected themselves and their science to critical self-examination and study.

“While the admissibility of handwriting evidence in the post-*Daubert* world appears to be a matter of first impression for our Court, every circuit to have addressed the issue has concluded, as on the fingerprint issue, that such evidence is properly admissible....” [Citations omitted.]

At page 271, Currin is quoted as saying that standards are the uniqueness of certain similarities and the quality and skill of examiner. He used size, spacing of letters, and misspelling, but mostly form of letters. The Court noted: “To the extent a given handwriting analysis is flawed or flimsy, an able defense lawyer will bring that fact to the jury’s attention, both through skillful cross-examination and by presenting expert testimony of his own. But in light of Crisp’s failure to offer us any reason today to doubt the reliability of handwriting analysis evidence in general, we must decline to deny our courts and judges such insights as it can offer.”

Dissent says, in essence, that it must meet all *Daubert* factors, and that it fails even general acceptance since only handwriting experts accept it. District courts are cited that reject it, and critics are quoted to support the dissent. The claim is made that academics will discover scientific truth since they are disinterested financially.

COMMENTARY: The critics do not like the idea that opposing attorneys are given the burden of proper cross-examination to expose flawed expert opinions in handwriting. What else in the world are they being paid for? But the critics are right to dislike this idea, since to make a proper cross-examination of an incompetent expert in any field the attorney needs to consult with a competent member of that same field, not those who posture as experts on all expertise and even flunk expertise in their own field when the bases of their opinion and performance are closely studied. As to academics being financially disinterested, does not Stelmach in *Starzecpyzel* claim qualification to offer scientific testimony re handwriting precisely because he can garner grant money to do research? And getting to testify so often, as Saks and Denbeaux do as anti-expert experts, does not seem to be disinterested pursuant either to one’s financial well-being or to one’s ego satisfaction.

261. *U.S. v Frost*, 234 F.3d 1023, 2000 U.S. App. LEXIS 31389, 55 Fed. R. Serv. (Callaghan) 1084 (8 Cir 2000); after remand, conviction affirmed, 321 F.3d 738, 2003 U.S. App. LEXIS 4016 (8 Cir 2003); rehearing denied, 2003 U.S. App. LEXIS 6881 (8 Cir 2003)  
2000 U.S. App. LEXIS 31389:

Defendant’s motion *in limine* was granted to prevent the introduction of expert handwriting testimony, because defendant stipulated he had written disputed signature of client on basis of a power of attorney, which was now lost. Thus the prejudicial effects of the proposed testimony would have outweighed its probative value. Same ruling was given on introduction of his civil deposition in which he had earlier denied having written the client’s signature. District Court’s *in limine* ruling was overturned regarding the deposition, but the case report does not seem to indicate whether it was also overruled regarding expert handwriting evidence.

2003 U.S. App. LEXIS 4016:

There is no mention of handwriting expert testimony, presumably because of defendant’s admission of having written the client’s name on several checks and other papers.

COMMENTARY: Maybe the best proof of reliability of expert opinion as to handwriting is

when a suspect agrees with the conclusion, particularly to keep the expert from testifying as in this case. Not only would the expert show the falsity of the writing but also how the forger modified his own style to imitate the victim's style, thus defeating the claim of innocence based on a purportedly lost power of attorney.

262. *U.S. v Goist*, 59 Fed. Appx. 757, 2003 U.S. App. LEXIS 4291 (6 Cir 2003)

Bank robber gave note to teller demanding "50s, \$ 20s, and \$ 100s." At [\*3]: "Subsequently, Goist's fingerprints were found on the note given to the bank teller. Goist also gave eighty-seven handwriting exemplars which were then analyzed by the FBI laboratory. James Taylor from the FBI testified that the demand note and handwriting exemplars given by Goist shared similar characteristics. Nonetheless, Taylor was unable to conclude affirmatively that the same person wrote the demand note and the exemplars."

COMMENTARY: A case of routine admissibility.

263. *U.S. v Lewis*, 220 F. Supp. 2d 548, 2002 U.S. Dist. LEXIS 17062 (S.D. WV 2002); affirmed, 75 Fed. Appx. 164, 2003 U.S. App. LEXIS 19077 (4 Cir 2003)  
220 F. Supp. 2d 548:

Court summary: "(1) government's handwriting analyst did not qualify as expert witness...." Anonymous letters contained powder which recipients feared was anthrax. Photocopied handwriting was admitted by a lady to be hers from letters she wrote to her former boyfriend, Lewis. Lewis was arrested, whose pretrial motion to exclude handwriting expert John W. Cawley, III, was granted.

At page 553 the usual "central tenet" is given. Through three columns, Cawley's *Daubert* testimony is summarized, and at page 554 it ends with: "In sum, Mr. Cawley could not testify about the substance of the studies he cited. He did not know the relevant methodologies or the error rate involved in these studies. His bald assertion that the 'basic principle of handwriting identification has been proven time and time again through research in [his] field,' without more specific substance, is inadequate to demonstrate testability and error rate." Then his assertions of 100% passage of proficiency tests and that all his colleagues always pass and always agree with each other and always get it right are cited as undermining his credibility. He gave no "substantive explanation of the standard used in the field" and "stated that stroke similarities are required to make a positive match" but was unclear as to how many were needed. Nor was there an explanation why 25 exemplars are the standard.

COMMENTARY: This is another case to study closely in order to learn what not to do as a witness in a *Daubert* hearing. The witness who is citing professional literature should know it from personal study, have full bibliographic citations and copies of the most important studies relied on. Did Mr. Cawley testify from recall of reports by others who studied the applicable texts? The exclusion was not appealed by the Government.

264. *U.S. v Mayle*, 334 F.3d 552, 2003 U.S. App. LEXIS 13263, 2003 FED App 0216P (6 Cir 2003)

Mayle murdered an SSI recipient and cashed his checks. "The government's handwriting expert testified that the signatures on the SSI checks were not Newman's signatures but tracings



of his signature.”

COMMENTARY: A case of routine admissibility.

265. *U.S. v Sanders and Wilson*, 59 Fed. Appx. 765; 2003 U.S. App. LEXIS 4305 (6 Cir 2003); cert denied, *Sanders v US*, 157 L.Ed.2d 95, 124 S.Ct. 140 (2003); cert. denied, *Wilson v US*, 2003 U.S. LEXIS 8588 (US Dec 1, 2003)

Objection to admissibility of testimony by handwriting expert, James Regent, was not made at trial, and so issue was not preserved for appeal. Objection was only to Judge’s describing the witness as an expert. Nevertheless, if the issue were properly appealed, Trial Judge’s decision to admit the evidence was proper because the expert was highly qualified and he explained the basis for his opinion.

COMMENTARY: The expert apparently gave conclusion as to maker of the writing. It is of note that the Court of Appeals made it a point to rule the testimony properly admissible when it could have skirted the issue.

Regent authored a fine paper on handwritten disguise by slant based on an astute research protocol: 22 *Journal of Forensic Sciences*, “Changing slant. Is it the only change?” 216-21 (Jan. 1977).

266. *U.S. v Wiggan*, 2003 US App LEIS 2407, 58 F Appx 975 (4 Cir 2003)

Defendant moved that Government’s handwriting expert ought to be excluded due to failure of timely disclosure. The disclosure one week before trial did not make defendant suffer “substantial prejudice” and allowed him sufficient time to obtain his own handwriting expert. Thus there was no abuse of discretion by Trial Court in denying the motion.

COMMENTARY: A case of routine admissibility since the challenge was not on the basis of unreliability of the expert testimony. On the other hand, it might have been “substantial” prejudice to snooker defense into a last minute assessment of evidence the prosecution had time to address at leisure and with greater resources and personnel.

267. *Valente v Wallace, et al.*, 332 F.3d 30, 2003 U.S. App. LEXIS 11803, 61 Fed R Evid Serv (Callaghan) 993 (1 Cir 2003)

Valente was terminated by Hewlett-Packard for writing anonymous bomb threats. She sued the police and others for a warrantless arrest that did not result in prosecution. Her case was dismissed mainly on the basis that expert handwriting reports by McCann and Associates provided reasonable cause for the arrest.

COMMENTARY: Though no expert testimony was ever given, the expert report was of sufficient reliability to have the constitutionality of the arrest hold up in District Court and upon appeal. Further support for handwriting expertise is given at the end of the report: “Finally, Valente says that a psychological profile commissioned by HP allegedly suggested that the culprit had traits that differed from Valente’s. However, while handwriting is an inexact science, psychological profiling appears to be even more inexact; handwriting experts have been routinely used in courts for a century now, Mnookin, *supra*, at 1726, while psychological profiling remains primarily a law enforcement device for narrowing the field of suspects and is rarely admissible in court.” Mnookin’s article cited in favor of admissibility of handwriting expertise was written in



support of its inadmissibility. See my critique of the article in *A Challenge to Handwriting Experts and an Answer to Their Critics; Revised 2006*; A & M Matley, San Francisco, CA, May 2007.

## 2004

268. *Bryan v Gibson*, 276 F.3d 1163, 2001 U.S. App. LEXIS 27249 (10 Cir 2001); affirmed in part, vacated in part, *Bryan v Mullin*, 335 F.3d 1207, 2003 U.S. App. LEXIS 14576 (10 Cir 2003); certiorari denied, 158 L. Ed. 2d 472, 124 S. Ct. 1877, 2004 U.S. LEXIS 2613 (US 2004); writ of habeas corpus denied, 2004 U.S. App. LEXIS 11172, 2004 U.S. App. LEXIS 11247 (10 Cir 2004). Original state case: *Bryan v State*, 935 P.2d 338 (OK Cr App 1997); 1997 OK CR 69, 948 P.2d 1230, 1997 Okla. Crim. App. LEXIS 71 (OK Crim App 1997); certiorari denied, 522 U.S. 957, 139 L. Ed. 2d 299, 118 S.Ct. 383 (1997)

Bryan's conviction for murdering his aunt was affirmed. He had promissory notes wherein the victim agreed she owed him millions of dollars. A handwriting expert testified that Bryan had written them and forged her name as well as forging her signature and writing on checks.

COMMENTARY: A case of routine admissibility.

269. *Commonwealth v Lambert*, 1996 Pa. Super. LEXIS 40; 545 Pa. 650;680 A.2d 1160; 1996 Pa. LEXIS 1363 (PA 1996); *Lambert v Blackwell*, 962 F. Supp. 1521 (U.S. Dist. E.D. Penn. 1997); reversed and remanded, 134 F. 3d 506 (3rd Cir. 1997); denial of post conviction relief affirmed, 2000 Pa. Super. 396, 765 A.2d 306, 2000 Pa. Super. LEXIS 4138 (PA 2000); 175 F. Supp. 2d 776 (U.S. Dist. E.D. Penn. 2001); *Lambert v Blackwell*, 205 F.R.D. 180 (E.D. Penn. 2002); 2003 U.S. Dist. LEXIS 5125 (E.D. Pa., Apr. 1, 2003); affirmed, 387 F. 3d 210, 2004 U.S. App. LEXIS 21176 (3 Cir 2004); certiorari denied, 2005 U.S. LEXIS 4404 (U.S. 2005) 962 F.Supp. 1521:

At page 1542 is given a portion of the evidence of malfeasance by the prosecutorial team: "We heard the expert testimony of William J. Ries, a 'forensic document examiner' who has participated in examining documents in over 5,000 cases for the Philadelphia and surrounding counties District Attorney's Offices, including the Lancaster County District Attorney's Office. His testimony on April 2, 1997 confirmed that the 'statement' was 'unique' in the peculiarities already noted. The testimony confirmed our conclusion that the 'statement' was a fabrication, and that Chief Detective Solt knew it when he testified both in the Lambert case and before us.[32]" Footnote 32 refers to submitting Solt's testimony to the Federal Attorney's office for appropriate action. See comments on 2000 Pa. Super. LEXIS 4138 for the state court's quite different view of Ries's testimony.

The district court catalogs a number of violations of Lambert's constitutional rights, evidence of her innocence, and prosecutorial protection for the real murderer and accomplices. The decision ends with:

"Almost immediately after the snap judgment was made, law enforcement officials uncovered inconvenient facts such as the absence of cuts and bruises on Ms. Lambert — answer, no photographs of her — and many on Tabitha Buck and some on Yunkin — answer, conceal or destroy the mug shots. And as these untidy facts accumulated, Kenneff and Savage discovered a

balm for these evidentiary bruises, Lawrence Yunkin. Yunkin would say and do anything to obtain what his lawyer rightly described as ‘the deal of the century’ in the February 7, 1992 plea agreement for ‘hindering apprehension’, which would carry a state sentencing guidelines range of 0-12 months. Thus Lancaster’s best made a pact with Lancaster’s worst to convict the ‘trailer trash’ of first degree murder.

“In making a pact with this devil, Lancaster County made a Faustian Bargain. It lost its soul and it almost executed an innocent, abused woman. Its legal edifice now in ashes, we can only hope for a Witness-like barn-raising of the temple of justice.”

134 F. 3d 506:

The court of appeal threw Lambert back into the snake pit of the state courts: “We do not, however, diminish the obvious sense of outrage expressed by the prosecution nor that of the able district judge who heard and evaluated the evidence Lambert proffered. Resolution of these difficult questions 525\*525 must nonetheless await the appropriate forum for the constitutional balance our forefathers created to remain in equipoise. Accordingly, we will vacate the order of the district court granting the petition for writ of habeas corpus and remand to the district court with the direction to dismiss the petition without prejudice.”

2000 Pa. Super. LEXIS 4138:

William J. Ries, Appellant Lambert’s forensic document examiner before the Post Conviction Review court, had several opinions about the validity of the statement that Detective Solt took from Appellant during the investigation. The court summarized them all at page \*36: “Mr. Ries’s tone of disapproval and his inconsequential criticism of [Detective] Solt’s methods were of no help to this court and appeared to be little more than advocacy dressed in expert’s clothing.” Lt. Joseph Bonenberger, document examiner with the Pennsylvania State Police, came to other conclusions, such as Appellant’s signature in red ink was above, not below, other writing in black ink on the statement as revealed by microscopic examination. Further, Appellant’s own statements supported both Solt’s testimony that his writing in black ink recorded Lambert’s statements to him and Bonenberger’s testimony as to the sequence of the writing.

Additionally, defense handwriting expert testified that a document had no erasures and no traces of graphite; thus, no pencil writing had been made on the document. The prosecution stipulated to this opinion since its handwriting expert had also examined the document.

175 F. Supp. 2d 776:

Judge Dalzell reinstates his decision in 962 F. Supp. 1521.

2004 U.S. App. LEXIS 21176:

Denial of *habeas corpus* petition by District Court is affirmed. At page \*28: “Yunkin testified that in the document that passed between him and Lambert, Lambert had written the questions in pencil and he had written all his answers in pencil and then traced over every other word in ink so that they could not be changed. But Lambert’s expert testified that there was no indication of any pencil writing on the 29 Questions and that the questions and answers were written with two different pens. After the Commonwealth had an expert from the Pennsylvania State Police crime lab examine the document, Lambert and the government entered into a stipulation that there were no erasures or graphite on the document. The Commonwealth conceded that if its expert were called to the stand, he would essentially agree with Lambert’s expert.” Lambert’s expert also testified that Yunkin indeed had handwritten the questions. Another District Court judge had said

Lambert was innocent and that the government's conduct was "the worst case of prosecutorial misconduct in English-speaking experience." The Court of Appeals said that these findings were insupportable.

COMMENTARY: No challenge to any of the skills employed is indicated, making this a case of routine admissibility. Several skills in questioned document examination were involved besides handwriting identification, which appears to be incidental and only supportive of the writer's own testimony.

The opinion of Judge Dalzell on April 21, 1997, in the Federal District Court *habeas corpus* can be downloaded from the Internet. Document examination evidence is discussed in the section, "The Commonwealth's use of perjured testimony," sub-section, "2-3. The '29' questions were not altered, The Commonwealth knew it, and never took remedial measures." After a plea bargain, Junkin testified at trial that the questions were altered after he had written his answers. Defense and Commonwealth document examiners agreed there was no alteration of the document. Later, Junkin's plea bargain to hindering apprehension was negated because of this perjury, and he pled to third degree murder. The trial judge and Lambert's defense counsel were not informed of the perjury. In another event regarding expert testimony, without defense counsel's permission the prosecutor before trial talked to the defense medical expert on the autopsy of the victim, explaining the difficulty of future business between them. Changing his opinion, the expert at trial would not rule out inability of the victim to implicate defendant with her dying words. The expert's business with the prosecutor's office more than tripled the next year, going from \$11,829.00 to \$41,919.00.

Ries began as document examiner with the Philadelphia Police Department, then with the Philadelphia District Attorney's Office, and lastly, after a stint in private practice, with State of Ohio, Bureau of Criminal Investigation Crime Laboratory.

Lambert seems to have been left with her conviction and sentence, and presumably all others breathed a sigh of relief at new-found freedom to maintain their practices, while Lambert's medical expert can be comforted with his increased business from the prosecutor's office.

270. *Morrison v Weyerhaeuser Company*, 119 Fed. Appx. 581, 2004 U.S. App. LEXIS 25607 (5 Cir. 2004)

In suit by an employee over his dismissal allegedly in violation of the law, summary judgment was granted upon motion by Weyerhaeuser. Morrison relied on several factors in his claim that granting the motion was improper, one being handwriting expert evidence: "[\*9] Morrison also offered the testimony of a handwriting expert, Jeannett Hunt, who opined that Morrison's purported initials on a June 4, 2002, non-routine task check sheet were falsified. As the district court correctly noted, this evidence did not raise a material issue of fact with regard to pretext, because Morrison has failed to explain its relevance to the accident or to his termination."

COMMENTARY: An expert can provide factual evidence but not its legal link to what has to be established. We are on occasion brought to give irrelevant evidence or evidence whose relevance the attorney fails to establish. This failure is credited to the client who chose the failing attorney to act in his name and on his behalf. Ms. Hunt is a member of National Association of Document Examiners.

271. *Nettles v Newland*, 105 Fed. Appx. 144, 2004 U.S. App. LEXIS 14869 (9 Cir 2004), affirming: *People v Nettles*, 2000 Cal. LEXIS 8640 (CA 2000); certiorari denied, 125 S. Ct. 905, 160 L. Ed. 2d 801, 2005 U.S. LEXIS 104, 73 U.S.L.W. 3398 (US 2005)

Denial of habeas corpus petition is affirmed. At trial for passing bad checks, the prosecution's handwriting expert "definitively" concluded Nettles signed one check in question and probably signed two others.

COMMENTARY: A case of routine admissibility.

272. *Torres v Lytle*, 90 Fed. Appx. 288, 2004 App. LEXIS 1057 (10 Cir 2004); 461 F.3d 1303, 2006 U.S. App. LEXIS 23190 (10 Cir. 2006)

Torres was convicted of misdemeanor property destruction. The victim witness, Mr. Medina, later received a threatening letter. Torres was convicted of sending the letter. "At the retaliation trial, the government called only two [\*5] witnesses. The first was a handwriting expert, who presumably testified that Mr. Torres could have authored the letter. The second was Mr. Medina." The report concludes: "Because the record below does not provide sufficient evidence on which a jury could have convicted Mr. Torres, we VACATE" denial of petition for *habeas corpus* and remand.

461 F.3d 1303

After a second conviction, the handwriting expert testimony was irrelevant to this appeal which reversed denial of *habeas corpus* petition.

COMMENTARY: A case of routine admissibility.

273. *U.S. v Chavful*, 100 F Appx 226, 2004 U.S. App. LEXIS 7642 (5 Cir 2004)

It was not error to let an expert in gang language explain the meaning of a letter Chavful wrote nor to let a handwriting expert say he had disguised the exemplars he gave for the FBI.

COMMENTARY: A case of routine admissibility that applies the rule that disguise of exemplars can be considered by the fact-finder as consciousness of guilt and the long-standing rule that an expert in handwriting may testify as to disguise of same. The linguistics testimony was by an expert who had specific expertise in gang language.

274. *U.S. v Frazier*, 11<sup>th</sup> Cir., No. 01-14680, 2/26/03; 72 *Criminal Law Reporter*, 548-9 (March 19, 2003)

The final appeal decision was in 2004 and is discussed last.

The *Criminal Law Reporter* said that the Trial Court ruled that a defense expert could testify to the absence of physical evidence tied to defendant but "would not be allowed to draw any inferences based on the absence of evidence supporting the allegations of sexual assault." Then later: "Qualification of an expert does not depend on a scientific background, the majority stressed.... [T]he Supreme Court extended *Daubert*'s application from 'scientific testimony' to 'all expert testimony' so that science is no longer the sine qua non of analysis under *Daubert*. This makes sense, the majority noted, in view of the disjunctive language of Rule 702."

Experts on sexual assault evidence relied for the most part on their experience. Handwriting expertise is referred to as one example how experience contributes to reliability of an opinion.

COMMENTARY: In a sexual assault case, the strict interpretation of *Daubert* robs the defense of the testimony of a critical expert witness. Fortunately, the Court of Appeals reversed and remanded by putting the kibosh on the very incorrect view that the anti-expert experts take. Those among us who are no more than skilled technicians would thus be admissible under *Daubert*, while those of us who offer sound scientific evidence would enjoy a greater reliability. Cases reviewed herein illustrate both kinds of handwriting expertise are alive and well. But we must all take responsibility to defend clients and courts against those whose opinions are subjective and, therefore, primarily accommodating to the client.

However, this shows the danger of taking Internet documents on face value, since the complete citation as known so far is:

*U.S. v Frazier*, judgment of trial court vacated and case remanded for new trial, 322 F.3d 1262, 2003 U.S. App. LEXIS 3511, 60 Fed. R. Evid. Serv. (Callaghan) 1120, 16 Fla. L. Weekly Fed. C 361 (11 Cir 2003); opinion vacated and hearing in blanc granted, 344 F.3d 1293, 2003 U.S. App. LEXIS 18980, 16 Fla. L. Weekly Fed. C 1086 (11 Cir 2003); affirming judgment of trial court, 387 F.3d 1244, 2004 U.S. App. LEXIS 21503, 65 Fed. R. Evid. Serv. (Callaghan) 675, 17 Fla. L. Weekly Fed. C 1132 (11 Cir 2004)  
2004 U.S. App. LEXIS 21503:

Defense expert could give no scientific backing for opinion of frequency that hair or bodily fluids are left by perpetrator in rape cases. Besides the defense expert, FBI experts were called by defense to show no transfer happened, and they were called as experts on prosecution rebuttal to show low frequency of such evidence in rape cases. They could offer no scientific backing either, but that did not curtail their testimony as it did the defense expert's. Since defendant's conviction was partly based on the idea that lack of physical evidence of rape made no difference, while his defense was that such lack of evidence disproved the fact of rape, the case is excellent for study of how *Daubert* factors are played with to support both sides of the balance, even by the justices of the Court of Appeals.

275. *U.S. v Gaskin and Castle*, 364 F.3d 438, 2004 U.S. App. LEXIS 7440 (2 Cir 2004); certiorari denied in *Gaskin v U.S.*, 125 S. Ct. 1878, 161 L. Ed. 2d 751, 2005 U.S. LEXIS 3186, 73 U.S.L.W. 3621 (US 2005)

In an argument of ineffective assistance of counsel, Castle contended his trial counsel should not have stipulated to his signature on four government exhibits. This was on basis counsel had stated to the District Court that "if he had known that the government would not call an FBI handwriting expert as a witness" he would not have stipulated that Castle signed the four exemplars to be compared to a disputed car rental receipt. With the stipulation given, the prosecutor chose not to call the expert and let the jury make its own comparison. However, Castle did not assert the government could not have proven the signatures genuine nor could he demonstrate that failure to call the expert prejudiced him.

COMMENTARY: There was no challenge to reliability, at least overtly, unless one might speculate that defense counsel had planned on impeaching the expert and thus "proving" the signatures false. This case would thus only be one to show the post-*Daubert* acceptability of the expertise in general.

276. *U.S. v Lewis*, 113 Fed. Appx. 336, 2004 U.S. App. LEXIS 22269 (10 Cir. 2004); certiorari denied, *Lewis v. U.S.*, 161 L. Ed. 2d 199, 2005 U.S. LEXIS 2166 (U.S. 2005)

After a guilty plea and at the restitution hearing the court received testimony from a handwriting expert.

COMMENTARY: A case of routine admissibility.

277. *U.S. v Mitchell*, conviction vacated and remanded for new trial, 145 F.3d 572, 1998 U.S. App. LEXIS 9714, 49 Fed R Evid Serv (Callaghan) 361 (3 Cir 1998); on remand, 96-407-CR (E.D. PA Sept. 13, 1999); motion for new trial denied, 199 FS2 262, 2002 US Dist LEXIS 6270 (E.D. PA 2002); affirmed, 365 F.3d 215, 2004 U.S. App. LEXIS 8474 (3 Cir 2004); certiorari denied, *Mitchell v U.S.*, 2004 U.S. LEXIS 7358 (US 2004)

In 145 F.3d 572, the central issue was admissibility of an anonymous note of which the defense argued on appeal at page 579: “Mitchell argues that evaluation of the trustworthiness of the anonymous note reveals that the circumstances surrounding its creation do not possess sufficient guarantees of trustworthiness permitting its admissibility into evidence. As he points out, the government failed to produce any evidence as to who authored the note or the circumstances under which it was written. Thus, the government failed to meet its burden of showing that cross examination of the author of the note would have been of marginal utility to Mitchell.”

In 2004 U.S. App. LEXIS 8474, extensive discussion is given to the several *Daubert* factors and the admissibility of expert fingerprint evidence. Appellant contended that his experts who were “undoubtedly qualified” were erroneously precluded by the Trial Court from giving their opinions in rebuttal to the Government’s fingerprint expert evidence. However, they were to testify that forensic fingerprint identification was not a science, which was irrelevant. The evidence did not have to be scientific to be admissible. *U.S. v Velasquez* is cited by appellant in support of his position, but the Court of Appeals explains that *Velasquez* addresses a different issue of admissibility of expert testimony. At [\*93] the three challenges the defense could have made are given. First was to challenge the specific identification of Mitchell’s prints, and second to attack the reliability of latent fingerprint identification in general by addressing one or more factors testing reliability. The third choice, the one they made, was to put on a witness to say that it was not a science, and that the Trial Judge forbade as irrelevant to admissibility or reliability.

The three defense experts, who were fully qualified to testify to the immaterial and inadmissible theory that forensic fingerprint identification is not a science, were Dr. David Stoney of McCrone Research Institute in Chicago, Prof. James Starr of George Washington University, and Simon Cole, a post-doctoral fellow at Rutgers University.

COMMENTARY: 145 F.3d 572 is offered as background to the later decision. The case report at 365 F.3d 215, 2004 U.S. App. LEXIS 8474, is an excellent study in a thorough-going review of a *Daubert* hearing upon appeal. There are other issues addressed in the report, such as the Government not disclosing solicitation of studies to validate fingerprint identification and why that was not ground for reversal, so the entire case report is recommended for study by both attorneys and experts who want to understand how to cover all factors that are used to determine reliability.

278. *U.S. v Prime*, 2002 US Dist LEXIS 18629, 220 Fed. Sup.2d 1203 (W.D. Wash. 2002); affirmed, 363 Fed.3d 1028, 2004 U.S. App. LEXIS 7365, 64 Fed. R. Evid. Serv. (Callaghan) 219 (9 Cir 2004); certiorari denied in *Prime v U.S.*, 125 S.Ct. 1005, 160 L.Ed.2d 1007, 2005 U.S. LEXIS 1067, 73 U.S.L.W. 3438 (US 2005); vacated by, remanded by, motion granted by *Prime v U.S.*, 125 S. Ct. 1005, 160 L. Ed. 2d 1007, 2005 U.S. LEXIS 1067 (U.S., 2005); on remand at, amended by *U.S. v Prime*, 2005 U.S. App. LEXIS 27272 (9th Cir. Wash., Dec. 14, 2005); substituted opinion, conviction affirmed, sentence remanded, *U.S. v Prime*, 431 F.3d 1147, 2005 U.S. App. LEXIS 27276 (9th Cir. 2005); sentence affirmed, *U.S. v Prime*, 225 Fed. Appx. 466, 2007 U.S. App. LEXIS 6263 (9 Cir. 2007)  
220 FS2 1203:

This is a counterfeiting case in which Secret Service expert Kathleen Storer identified portions of 76 exhibits as having been written by which of three suspects, using 114, 14 and 112 pages of exemplars. The Court reviews handwriting cases applying *Daubert*. Bottom line is that the Court rules on admissibility of the proffered evidence in the context of the current case, not on the expertise in general nor on academic disputes. An expertise need not be proven perfect. All four *Daubert* factors were met to the satisfaction of this judge. At page 1216 the double edged sword of the critics' position is wisely given: "However, the apparent recent trend to exclude FDE testimony is a result, the Court believes, of an excessively rigid application of *Daubert*. Since *Daubert* applies to both criminal and civil cases, such an approach may, one day, result in unfortunate consequences for a criminal defendant who is denied the ability to present the best evidence that he did not author an extortion demand or pen a forged signature. The Court declines to follow this trend on the record before it."

#### NINTH CIRCUIT DECISION:

The District Court's rulings are fully upheld as to admission of handwriting expertise. The Ninth Circuit reiterates at length the bases for the rulings and ends by citing six cases from six other Federal Circuits which ruled handwriting expert testimony admissible under *Daubert*.

COMMENTARY: This case report for District Court, 220 FS2 1203, is highly recommended both for review of the dispute and for the legal reasoning it provides. That Federal Public Defenders seem particularly anxious to have all such expertise tossed out seems fraught with promise of much malice to their own work.

The case report for the Ninth Circuit, 363 F.3d 1028, discusses at length how each *Daubert* factor was met and how they view the current weaknesses in the field. For example: "While Kam's study demonstrates some degree of error, handwriting analysis need not be flawless in order to be admissible." If any of us needed to be flawless in order to perform any service, we would all have to stay in bed on any given morning for fear of flaw. Only those who see themselves as flawless demand flawlessness in others, and there may be no greater flaw than this.

279. *U.S. v Roberts*, U.S. Court of Appeals for the Armed Forces, No. 34236, March 23, 2004

Defendant was convicted of altering, removing and making false public records. Two falsified versions of his performance record were uncovered. "Handwriting analyses showed that the signatures on both of the questioned EPRs had been traced." Defendant's fingerprint was found near one of the traced signatures. The major issue in the appeal opinion was that nondisclosure of



the investigative file was harmless beyond a reasonable doubt due to the overwhelming evidence of guilt.

COMMENTARY: A case of routine admissibility.

280. *U.S. v Rutland*, 372 F.3d 543, 2004 U.S. App. LEXIS 12432, 64 Fed. R. Evid. Serv. (Callaghan) 833 (3 Cir 2004)

The District Court held a *Daubert* hearing and ruled the government's handwriting expert, Gus Lesnevich, and the defense anti-expert witness, unnamed, both qualified to testify at trial. All that is said of the latter is: "The defense expert attacked the general reliability of handwriting analysis."

The issue raised on appeal was that permitting a highly qualified expert to express an opinion on the ultimate issue was unfairly prejudicial. The Court of Appeals upheld the Trial Court in permitting just that on basis that the law was that expert qualifications can be considered in deciding weight to be given an opinion, and that a ruling that highly qualified experts may not give opinions on the ultimate issue would result in the absurdity that attorneys would have to search for less than highly qualified experts in order to solicit such opinions.

COMMENTARY: Once more a Court of Appeals upholds admissibility of handwriting expertise while none that I know of has ever ruled to the contrary, though individuals proffered as experts have not been found sufficiently qualified. The latter assumes an admissible standard against which the individual is measured and found wanting in a particular instance.

The little sentence on the defense expert provides occasion to return to a theme I have expressed before. There is no efficacy in a general attack, but only in why this expert in this case regarding this opinion about this handwriting is specifically unreliable. Only a genuine expert in the special field in question can provide a client with the latter. Thus, if the *Rutland* defense "expert" had researched the opposing expert's trial experience, he might have found *U.S. v Frame*, U.S. District for the Eastern District of Texas, Marshall Division, Criminal Docket No. 2:99CR-2. At the first trial which ended with a hung jury, Mr. Lesnevich testified that defendant had written at least part of many incriminating documents. At the second trial before The Honorable T. John Ward, on May 23, 2000, Mr. Lesnevich again appeared as handwriting expert for the prosecution. On cross-examination, at page 133, lines 20-24, this admission finally occurred:

"Q. Well, when you say it's a possibility, you're telling us, in effect, in plain English, 'I can't tell you either way if he wrote or didn't write part of those tickets I examined'?"

"A. That's correct."

The jury acquitted Mr. Frame of all charges. However, that did not prevent the same expert from testifying with assurance in the subsequent civil case that Frame had written the same tickets. I offer this as only one example of the many potentially impeaching things that the anti-expert experts are too inexpert to provide to a defense attorney while they testify to their incomprehension as to how others can know more and be more competent than they.

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281. *Aetna Life Insurance Company v Richardson*, 140 Fed. Appx. 853; 2005 U.S. App. LEXIS 14735 (11 Cir 2005)

“The record demonstrates that the district court carefully weighed the evidence and found that the expert testimony of Mr. Shiver was more credible than the evidence offered in opposition thereto.”

COMMENTARY: The quote given is the entire statement as to the expert evidence.

282. *Breezevale Limited v Dickinson, et al.*, 879 A.2d 957, 2005 D.C. App. LEXIS 412 (D.C. Cir. 2005)

“The court also based its finding on a detailed examination of the documents themselves, which were admitted into evidence. A document dated February 25, 1987, was computer generated, even though by Jaoude’s own testimony, Breezevale did not yet own computers at that [\*13] point. Although Breezevale claimed that Ms. Paul fabricated this particular document on her own initiative, this explanation was belied by Jaoude’s handwritten notations on the document. A computer evidence expert testified that both this document and a similar one with Jaoude’s handwriting on it were produced on Ms. Paul’s computer with a last access date of February 21, 1991, thus corroborating Ms. Paul’s testimony that the documents were created at that time. Other evidence of forgery includes the fact that two documents (each with Jaoude’s signature) were typed on a letterhead which did not exist in 1987. n4 Although Jaoude denied having signed these documents, the court credited the testimony of a handwriting expert who concluded with ‘no reservation whatsoever’ that it was indeed Jaoude’s signature on the documents. In short, the court found that the evidence lead to the ‘inescapable conclusion’ that the documents at issue were forged, and this conclusion is supported by substantial evidence in the record.”

Footnote 4 reads: “The letterhead contained the name and address of ‘Breezevale Incorporated, New Jersey,’ a subsidiary that had not yet been formed.”

COMMENTARY: It is rare that a case report packs so much documentary evidence in such a short space. I believe we would do well to collect case reports that consider such stock-in-trade items as documents dated before the existence of the letterhead they bear. When we offer such evidence, the attorney can be armed with legal precedents if an objection should be offered.

283. *Durkin and Reed v Equifax Check Services, Inc.*, 2004 U.S. Dist. LEXIS 5373 (N.D. Ill., Mar. 31, 2004); affirmed, 406 F.3d 410, 2005 U.S. App. LEXIS 6716, 67 Fed. R. Evid. Serv. (Callaghan) 8 (7 Cir. 2005); rehearing denied, 2005 U.S. App. LEXIS 13474 (7 Cir. 2005)

Plaintiffs offered linguist and English professor Dr. Allan Metcalf to prove specific passage of collection letters were confusing. First summary judgment was denied because Metcalf was to testify. Then a *Daubert* challenge prevailed and Metcalf was ruled unreliable. Subsequently, summary judgment was granted since plaintiffs only had their own testimony that the letters confused them. Reasons for Metcalf’s being found unreliable included that he focused on entire letters rather than the specific passages plaintiffs challenged and that he did not explain how he arrived at his opinion.

“The district court disagreed [with motion for summary judgment] but ruled that the case should go to trial since the plaintiffs procured a linguistics expert, English professor Allan Metcalf, to support their [\*7] claims of confusion. However, Equifax later filed a motion to bar Metcalf from testifying at trial, which the district court granted. Consequently, the plaintiffs were left with no evidence of confusion beyond the collection letters themselves and their...own assertions that the letters were confusing. This development led Equifax to move for summary judgment... The district court granted the motion, ruling that the plaintiffs could not proceed to trial relying solely on the letters and their own self-serving testimony.”

The District Court found Metcalf’s testimony both irrelevant and unreliable, which was affirmed on appeal. “Accordingly, the district court did not abuse its discretion by excluding Metcalf’s untestable say-so.”

COMMENTARY: Linguistic analysis now enjoys sound research backing and reliable methodologies, though there are still some rather marginal individuals claiming to be experts.

284. *Pasha v Gonzales*, 433 F.3d 530, 2005 U.S. App. LEXIS 28899, 69 Fed. R. Evid. Serv. (Callaghan) 98 (7 Cir. 2005)

In an immigration case, Gideon Epstein examined four out of nine documents Pasha presented and said they “were probably fakes.” He based this on his belief that the Albanian government would not use color laser print technology and on the fact that the Albanian printed text lacked diacritical marks. However, Epstein admittedly had no knowledge of Albanian and how it should be written and had no access to genuine comparable documents. The Court of Appeals stated: “The principal ground of the appeal relates to the infirmities in document expert Epstein’s evidence. He should not have been permitted to testify.”

Strictly speaking, the *Daubert* criteria do not apply to administrative hearings, such as Immigration Court. Nevertheless, junk science ought not be admitted.

COMMENTARY: All the theoretical principles on which Epstein relied were nothing more than unfounded and unverified speculation. So often when expert witnesses engage in speculations based on their own lack of objective knowledge, attorneys and judges assume the expert knows whereas the expert is only making assumptions, albeit most self-assuredly. It is this kind of empty rumination that gives excuse for critics to say all of us are doing the same thing. Epstein holds, or once held, certification from ABFDE.

285. *Tolliver; Tradco, Inc., v Federal Republic of Nigeria*, 128 Fed. Appx. 469, 2005 U.S. App. LEXIS 5827 (6 Cir. 2005)

David A Crown testified for defendant. Examining more than 20 documents he found, among other things, that multiple names were signed by one person, that one name was signed by multiple persons, and some signatures were cut-and-paste. His testimony went un rebutted by contrary expert testimony.

COMMENTARY: The case report suggests it was a document examiner’s dream case.

286. *The Estate of Trentadue, by and through its Personal Representative Aguilar, et al., v United States, et al.*, and related cases, 397 F.3d 840, 2005 U.S. App. LEXIS 1811 (10 Cir. 2005)

The entire statement on expert handwriting testimony is this: “A handwriting expert testified

that the note written on Trentadue's cell wall--'My Mind No [\*43] Longer It's Friend Love ya. Familia!'--matched previous samples of Trentadue's handwriting. The district court concluded that this writing could reasonably be regarded as a suicide note."

COMMENTARY: A case of routine admissibility.

287. *U.S. v Birkett, et al.*, 138 Fed. Appx. 375, 2005 U.S. App. LEXIS 13918 (2 Cir. 2005)

Handwriting expert testified that a handwritten letter had a phrase added by a second person.

COMMENTARY: A case of routine admissibility.

288. *U.S. v Brown*, 2005 U.S. App. LEXIS 22703 (2 Cir 2005)

Defendant submitted that handwriting analysis does not satisfy requirements for admissibility so that the district court was obliged to restrict the expert witness from expressing an opinion of authorship. "Similar attacks on handwriting analysis have been rejected by our sister circuits. [Citations omitted.] While our own court has not addressed the issue, we have routinely alluded to expert handwriting analysis without expressing any reservation as to its admissibility under Rule 702." The following cases are then cited, all of which are Second Circuit decisions and are discussed in this paper: *U.S. v Tin Yat Chin*, *U.S. v Badmus* and *U.S. v Tarricone*.

COMMENTARY: This paper discusses other Second Circuit cases where expert handwriting evidence was received apparently without challenge as to reliability of the field itself.

289. *U.S. v Della Rose*, 403 F.3d 891, 2005 U.S. App. LEXIS 5696, 66 Fed. R. Evid. Serv. (Callaghan) 1170 (7 Cir. 2005)

Della Rose, an attorney, was accused of taking a client's funds. A document examiner testified that the alleged signature of the client on various documents was not his natural writing. The signatures, however, were consistent among themselves. The inference was that Della Rose had someone else write the signatures for a share of the take.

COMMENTARY: A case of routine admissibility.

290. *U.S. v Kregas*, 149 Fed. Appx. 779, 2005 U.S. App. LEXIS 19818 (10 Cir. 2005)

At page [\*10]: "Beverly Mazur, a Questioned Documents Examiner for the City of Aurora Police Department, testified she compared Onesty's signature on the application with her known signature and concluded the signature on the application was a simulation of her actual signature. However, Mazur could not determine who forged Onesty's signature, including whether Kregas was the forger."

COMMENTARY: Identifying the writer of a forged signature may be the most difficult task handwriting experts face, indeed, most often impossible.

291. *U.S. v Mornan*, 413 F.3d 372, 2005 U.S. App. LEXIS 13043, 67 Fed. R. Evid. Serv. (Callaghan) 754 (3 Cir. 2005)

Kirsten Jackson, a forensic document examiner with the United States Postal Inspection Service, testified as to her qualifications, method and ability. She gave an explanation why she concluded that Mornan definitely wrote four of 21 exhibits and "probably" wrote two others. For 15 other exhibits she could only say there were similarities to Mornan's handwriting. There was

no objection to her qualifications of admissibility.

COMMENTARY: The Third Circuit's *Rosario* decision is cited to explain the meaning of "probable" as used by Jackson. Except the Court misstates it thus: "[T]here are also a number of irreconcilable differences and the examiner suspects that they are due to some factor but cannot safely attribute the lack of agreement to the effect of that factor." According to recognized authorities, such as Ordway Hilton, a single "irreconcilable difference" prevents even a probable identification. The case report indicates that Jackson was very thorough in her work and very prudent in expressing her opinion.

292. *U.S. v Rose*, No. 03-4230. (US Ct. App. 7 Cir. 2005)

Rose was an attorney accused of forging a client's signature on a number of documents. A forensic document examiner testified a number of times that a signature was not the client's "natural signature." The court concluded that another individual signed all the false signatures, and that individual made a deal with the Government in exchange for testimony against Rose.

COMMENTARY: That the signatures were not the client's "natural signatures" is a terminology most often used to indicate the person had signed but had changed his manner of writing. In fact, every signature anyone but you has signed since the very first signature ever to be written is not your "natural signature," as well as any of your very own that you messed up for any reason. Thus an impressive sounding phrase is rather meaningless by meaning far too much while saying far too little. However, such terminological slovenliness is a good way to make a living in many professions.

293. *U.S. v Seals and Johnson*, 419 F.3d 600, 2005 U.S. App. LEXIS 17225, 67 Fed. R. Evid. Serv. (Callaghan) 1290 (7 Cir. 2005); certiorari denied, *Seals v. U.S.*, 126 S. Ct. 770, 163 L. Ed. 2d 597, 2005 U.S. LEXIS 8813 (U.S. 2005); appeal after remand at *U.S. v. Seals*, 2006 U.S. App. LEXIS 5305 (7 Cir. 2006)

In a case of routine admissibility, a handwriting expert testified that Johnson wrote incriminating notes given to a man named Taylor who assisted in the bank robbery.

294. *U.S. v Smith*, 2005 U.S. App. LEXIS 23798 (4 Cir 2005)

Smith challenged the admissibility of testimony by Carl McClary, "an expert on handwriting comparison analysis." Citing its decision in *Crisp*, the Court said: "Here, as in *Crisp*, the defendant did not present any evidence that handwriting analysis was unreliable." It is not required that it have the status of scientific law, and courts need not "expend scarce judicial resources reexamining a familiar form of expertise every time opinion evidence is offered."

COMMENTARY: In other words, forensic handwriting expertise as a discipline has sufficiently proven itself as far as the Fourth Circuit is concerned. As always, that does not guarantee that an individual expert is offering reliable testimony.

295. *U.S. v Walls*, 134 Fed. Appx. 825, 2005 U.S. App. LEXIS 8456, 2005 FED App. 0392N (6th Cir.)

A Postal Service forensic handwriting expert testified at trial. Walls' handwriting and signature were identified on stolen money orders, and it was shown that a previous name was

changed to his.

COMMENTARY: A case of routine admissibility.

## 2006

296. *Hanaj v Gonzales*, 446 F.3d 694, 2006 U.S. App. LEXIS 10943 (7 Cir. 2006)

In an immigration case, “Gideon Epstein, an expert document examiner from the federal government’s Forensic Document Laboratory, examined the documents submitted by Hanaj. After comparing Hanaj’s birth [\*10] certificate to four authentic birth certificates in FDL’s files, Epstein concluded that the birth certificate was a fabricated document. Epstein also concluded that the international driver’s license was a very poor quality counterfeit. The FDL files did not contain documents similar to the arrest warrant and the LDK membership card, so Epstein reached no conclusion as to the validity of those documents.”

The Seventh Circuit held that the Immigration Judge [IJ] put too much faith in Mr. Epstein’s testimony: “The IJ cannot selectively examine evidence in determining credibility, but must present a reasoned analysis of the evidence as a whole. Instead, the IJ in this [\*19] case used the allegedly forged nature of the documents to negate the credibility of the claim as a whole, and to negate the relevance of all other corroborating evidence presented.”

At \*9: “Kelly Lynn Maynard, a linguist, testified as to an analysis of Hanaj’s speech, concluding that it was consistent with the speech of persons in Southeastern Kosovo, specifically Gjilan. The government did not contest her qualifications as an expert or the admissibility of her testimony, but cross-examined as to her conclusions.” Stylistics.

COMMENTARY: For a rather disparaging evaluation of Mr. Epstein’s testimony by the same Court of Appeals, see *Pasha v Gonzales*, 433 F.3d 530, 2005 U.S. App. LEXIS 28899, 69 Fed. R. Evid. Serv. (Callaghan) 98 (7 Cir. 2005). At least he learned to compare the suspicious to what he believed were genuine samples of the same form.

I have had INS, now Homeland Security, cases where government experts were to expert they needed no exemplars. They relied on their own gratuitous speculations, apparently commonly held by many of them, as to how foreign governments, however impoverished, must use sophisticated methods to prepare documents. A long time after they are issued, these documents must past muster with American experts who have no need to know how the genuine is produced or what it looks like.

297. *U.S. v Adeyi*, 165 Fed. Appx. 944, 2006 U.S. App. LEXIS 3300 (2 Cir. 2006)

“The government’s handwriting expert testified to his belief that, based on the handwriting in Adeyi’s address book, two of the handwritten slips of paper found in the heroin packages appeared to be authored by Adeyi. Our circuit has not authoritatively decided whether a handwriting expert may offer his opinion as to the authorship of a handwriting sample, based on a comparison with a known sample. We have held, however, that ‘for an error to be plain, it must, at a minimum, be clear under current law.... A reviewing court typically will not find such error where the operative legal question is unsettled.’ *United States v. Weintraub*, 273 F.3d 139, 152 (2d Cir. 2001) (internal quotation marks omitted). Because expert opinion as [\*4] to handwriting authorship is not clearly inadmissible in this circuit, we cannot say the district court

committed plain error. n1

“Footnote 1: Although we do not now decide on the admissibility of such evidence, we note that those circuits that have considered the question are unanimous that a properly admitted handwriting expert may, if the factors enumerated in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), are satisfied, offer an opinion as to the authorship of a disputed document. See, e.g., *United States v. Prime*, 431 F.3d 1147, 1151-54 (9th Cir. 2005); *United States v. Crisp*, 324 F.3d 261, 271 (4th Cir. 2003); *United States v. Mooney*, 315 F.3d 54, 61-63 (1st Cir. 2002); *United States v. Jolivet*, 224 F.3d 902, 905-06 (8th Cir. 2000); *United States v. Paul*, 175 F.3d 906, 909-12 (11th Cir. 1999). But see *United States v. Oskowitz*, 294 F. Supp. 2d 379, 384 (E.D.N.Y. 2003) (citing to district court cases that have excluded handwriting expert testimony offering an opinion as to authorship).”

COMMENTARY: Take particular note of what they took note of: “We note that those circuits that have considered the question are unanimous that a properly admitted handwriting expert may, if the factors in *Daubert*..., are satisfied, offer an opinion as to the authorship of a disputed document.”

Maybe the solution to the alleged problem with unreliability in the forensic disciplines is twofold. First, is to oust those who are found not to satisfy the *Daubert* criteria if they fail to learn how. Second, is to ignore critics who themselves are found inadmissible when properly and thoroughly examined. We can take note how the critics of handwriting expertise have been rejected by courts of law. If a handwriting expert had been so often rejected, these very critics would scream from the housetops how that proves all handwriting experts are charlatans, yet they do not even whisper that the same experience for them at least hints they may in a tiny small way suffer some itty-bitty flaw.

Summaries and commentaries on all cases cited in Footnote 1 are included in this work.

298. *U.S. v Alston-Graves*, 435 F.3d 331, 369 U.S. App. D.C. 219, 2006 U.S. App. LEXIS 2001 (D.C. Cir. 2006)

A handwriting examiner testified that “in all likelihood” defendant had not prepared signatures in question, but he could not rule out her use of a disguised handwriting.

COMMENTARY: It would seem that “in all likelihood” would rule out all alternative likelihoods such as defendant signing with a disguise. Even more in all likelihood, such terminological mishmash masks ineptitude.

299. *U.S. v Bistrup and Bistrup*, 449 F.3d 873, 2006 U.S. App. LEXIS 8689 (8 Cir. 2006)

In a trial of husband and wife for fraud, a handwriting expert identified Nancy Bistrup as writer of some documents but impermissibly as writer of others. Mistrial was denied but exhibits had to be relabeled. However, Nancy’s defense opened the door to that testimony, so the government expanded its announced handwriting testimony. Also, she did not engage her own handwriting expert.

COMMENTARY: Apparently the defense had a favorable pre-trial ruling to restrict the expert’s testimony but threw it away by expanding its own case. Moral to the story is that we should be careful not to overstep ourselves lest we step into a bog.

300. *U.S. v Garza*, 448 F.3d 294, 2006 U.S. App. LEXIS 10453, 70 Fed. R. Evid. Serv. (Callaghan) 54 (5 Cir. 2006)

Defense called handwriting expert Linda James who would testify that a witness's signatures on Garza's alleged confession and a search warrant did not match that witness's known signatures. Prosecution objected that James' testimony was not disclosed according to a court order and so should be excluded. Additionally, James testified she was given only photocopies of the witness's exemplar signatures though she had asked for originals. The trial judge ruled that the copies supplied to her made her testimony unreliable. There was no challenge to her qualifications, and her proffered testimony was held to be relevant.

COMMENTARY: I am more and more coming to the view that for the most part challenges to opposing expert testimony are because the challenging party knows full well the opinion is correct. Whatever the justification is that the attorney is duty bound to earn his living by fiercely defending the position of his client, however illegal and even criminal it might be, I submit there is a lack of morality somewhere in the endeavor.

Of a more important note for all expert witnesses, James acted correctly by asking for the better material and by doing the best she could with what the attorney provided. Thus, she offered a technically correct opinion. When you find yourself in such a situation, and I assume you would be providing a technically correct opinion, explain to the court that what you rely on are those traits that cannot be credited to the copying process, that they necessarily must be credited to the original. Explain that, although every copy loses something of the document being copied, the copying machine is engineered to render a faithful reproduction, that you rely only on those characteristic of the document that the machine does not alter. Apparently the defense attorney not only failed James before trial but failed to solicit the information that would have established the degree of reliability of her proffered testimony.

Ironically, the case report said that the non-expert jury was fully empowered and capable of doing what the trial judge incorrectly said a handwriting expert cannot. The body of our law is rich in ironies, because it is a very complex amalgam created by thousands of humans over many centuries. Yet all in all I believe it is as fine and fair a system of justice as any human society has created. Ms. James is a member of NADE and served as president beginning in 2009-2013.

301. *U.S. v Jackson, a/k/a Dorothy Winston*, 170 Fed. Appx. 812, 2006 U.S. App. LEXIS 4236 (4 Cir. 2006)

"A document examiner from the U.S. Secret Service concluded that Jackson probably filled out the patient information for 651 of the [prescription] forms in the name of 66 different patients. A drug enforcement agent testified that the prescriptions were for a total of 48,035 [\*5] pills of drugs, including Oxycontin, that contained oxycodone." She was convicted for, among other offences, conspiracy to distribute prescription painkillers.

COMMENTARY: A case of routine admissibility.

302. *U.S. v Mentzos*, 462 F.3d 830, 2006 U.S. App. LEXIS 23084 (8 Cir. 2006)

Mentzos represented himself at trial. His request for a handwriting expert among other experts was denied. At trial the prosecutor's handwriting expert identified him as writer of incriminating letters. On appeal he failed to show prejudice by the denial of experts, and he had waited till late

to request the experts. Besides, evidence of guilt was overwhelming.

COMMENTARY: A case of routine admissibility.

303. *U.S. v Zavala*, 190 Fed. Appx. 131, 2006 U.S. App. LEXIS 15848 (3 Cir. 2006)

A handwriting expert testified that Zavala had addressed a package.

COMMENTARY: A case of routine admissibility.

## 2007

304. *Bourne v Town of Madison*, 494 F. Supp. 2d 80, 2007 DNH 084 (US Dist. Ct. D. NH 2007)

At page 91: "To be sure, Bourne's claims that the defendants forged a cover letter, and that, when accused of the forgery, they retaliated by pressuring the Carroll County Sheriff and the county attorney to bring criminal charges against Bourne, are more serious. Again, however, Bourne does not support these claims with competent evidence. Bourne's proposed handwriting expert opined that the handwritten signature appearing on the town's version of the cover letter is not Bourne's, and that the computer-generated character impressions on the allegedly forged cover letter are consistent with similar impressions on documents known to have been created by the town. The court has ruled, however, that Bourne's expert is not qualified to testify as an expert on the latter subject and that the methodology he employed with respect to the former subject is unreliable. See Fed.R.Evid. 702 (expert testimony must be relevant and reliable). The court accordingly granted the defendants' motion to exclude Bourne's expert testimony. See Order of May 9, 2007 (document no. 95). Even if Bourne could establish the falsity of the signature by other means (e.g., by having the trier of fact compare the questioned signature with known Bourne signatures), he has not shown how he would prove that the document originated from the defendants."

COMMENTARY: The expert was disqualified twice; however, to his good fortune his name is not given nor the details why the two disqualifications.

305. *Gantt v Roe*, 389 F.3d 908, 2004 U.S. App. LEXIS 24283 (9 Cir. ); appeal after remand, *Gantt v. Scribner*, 2007 U.S. App. LEXIS 17863 (9th Cir. 2007)

At page [\*4]: "The prosecution's handwriting expert testified that there were 'good indications' the victim 'possibly wrote the numerical notations, particularly the numbers 88031227034.'" Later this is described as "not particularly strong" and "somewhat tentative conclusion." Then in footnote 9 the inadequacy of a previous government handwriting expert is used to bolster the doubtfulness of the present testimony: "We note that handwriting analysis is, even in the best of circumstances, not an exact science. A highly respected district judge has concluded that such evidence must be used with caution because it has 'serious problems' under the *Daubert* and *Kumho Tire* standard for scientific reliability. See *United States v. Hines*, 55 F. Supp. 2d 62, 68 (D. Mass. 1999) (*Gertner, J.*). This weakness gave greater strength to claim of error in nondisclosure of exculpatory evidence by the prosecution, and conviction was overturned and the case remanded for further proceedings.

COMMENTARY: Testifying several years after *Hines*, the handwriting expert in *Gantt* surely ought to have learned a lesson from *Hines* and similar cases. Today, six years since *Gantt*,



hopefully all of us who testify have finally paid attention. The Hines case was discussed earlier; see Item 19.

306. *Nields v Bradshaw, Warden*, 482 F.3d 442, 2007 U.S. App. LEXIS 7975, 2007 FED App. 0127P (6 Cir. 2007)

Handwriting examiner determined that murder victim had handwritten pages titled “Record of Abuse.”

COMMENTARY: Nields’ original trial in Ohio courts with conviction and death sentence was in 1997, which gives an idea how protracted legal processes can be.

307. *U.S. v Bullock*, 243 Fed. Appx. 107, 2007 U.S. App. LEXIS 16523, 2007 FED App. 0476N (6 Cir. 2007)

Charlotte Ware, a forensic document examiner for the United States Postal Inspection Service, testified that Bullock signed two tax returns and probably signed someone else’s name to one of them.

COMMENTARY: A case of routine admissibility.

308. *U.S. v Chin*, 371 Fed.3d 31, 2004 U.S. App. LEXIS 10707, 93 AFTR2 (RIA) 2519, 64 Fed R Evid Serv (Callaghan) 517 (2 Cir 2004); affirming conviction after remand, 476 F.3d 144, 2007 U.S. App. LEXIS 1976 (2 Cir. 2007)

2004 U.S. App. LEXIS 10707:

Conviction for impersonation of a federal employee and tax evasion was vacated and case remanded for new trial. The District Court limited the testimony of July Tay, an expert for defendant, to the linguistic differences between Cantonese and Mandarin and the expert’s opinion that Tin Yat Chin is a native Cantonese speaker, but the expert could not say the voice that witnesses testified to hearing over the phone was not Chin’s because he could not have faked the Mandarin accent they heard. That restriction was proper. There is extensive discussion of the proper reasons for the limitation, which Chin could attempt to cure on retrial.

However, the ruling excluding certain receipts as not being authenticated and admissible as non-hearsay was not harmless error. Chin had proffered a handwriting expert to testify that Chin had signed receipts which would put him in Queens when Government witnesses claimed he was in China. His wife and store personnel would also testify in support of his being in Queens. The District Court set too high a standard for authentication and wrongly rejected the proffer.

2007 U.S. App. LEXIS 1976:

“As part of the defense case, Chin introduced the New York credit card receipts that had been excluded from the first trial, as well as the testimony of a handwriting expert, Roger Rubin, who opined that the signatures on the credit card receipts were Chin’s. Over objection, the Government was then permitted to present on rebuttal the testimony of its own handwriting expert, John Sang, who opined that many of the receipts were probably not signed by Chin. The jury returned a verdict of guilty on all four counts.

“On this appeal from the second conviction, Chin’s most colorable claim concerns the Government’s failure to disclose its intent to call Sang, and anything about his expert testimony, until the day before the defense concluded its case. Well before the start of the second trial, the

defense had indicated its intent to call Rubin as its handwriting expert and had made the disclosures regarding his testimony required by *Rule 16(b)(1)(C) of the Fed. R. Crim. P.* The Government, for its part, had already retained Sang as its expert and had obtained from him an opinion challenging the authenticity of Chin's signatures [\*4] on the credit card receipts. Yet, knowing full well that the authenticity of these signatures would be a hotly contested issue in the case, the Government chose to remain entirely silent, until one day before the end of the defense case, both as to the fact that it had retained a handwriting expert and as to the testimony he was expected to give.

"At a minimum, this was a sharp practice, unworthy of a representative of the United States."

COMMENTARY: Regarding the first appeal, the expert handwriting evidence was rejected by the trial court on incorrect legal grounds, but one could maintain that the appeal ruling assumes it would be admissible. In any case, its proffer served as a factual basis for vacating the conviction. Regarding the second appeal, I submit that prosecutors engage in sharp practices because they know that playing the game above board would result in acquittal. Yet, after the verbal reproof, in effect the Court of Appeals said they may do this sort of thing with impunity.

Roger Rubin is a member of NADE.

309. *U.S. v Jawara*, 462 F.3d 1173, 2006 U.S. App. LEXIS 23468, 71 Fed. R. Evid. Serv. (Callaghan) 322 (9 Cir. 2006); amended, 474 F.3d 565, 2007 U.S. App. LEXIS 1132 (9 Cir. 2007); affirmed, 474 F.3d 565, 2007 U.S. App. LEXIS 1136 (9 Cir. 2007)  
2006 U.S. App. LEXIS 23468:

Affirming convictions for document fraud and conspiracy to commit marriage fraud to avoid the immigration laws.

In hearing on *in limine* motion to exclude testimony of document examiner, Carolyn Bayer-Broring, motion was denied, and a separate *Daubert* hearing was not needed. The Supreme Court never mandated the form the gatekeeping process should follow. It was error that no explicit statement of reliability was made by the trial court, but it was harmless error given the expert's extensive qualifications and her helpfulness to the jury that clearly showed her reliability. She testified to the falsity of purported Sierra Leone documents.

COMMENTARY: 2007 U.S. App. LEXIS 1136 repeats and affirms what was said regarding Bayer-Broring. The Ninth Circuit had ruled previously that a trial court need not conduct a *Daubert* hearing, just so long as the gatekeeping function of explicitly finding the proffered expert testimony to be sufficiently reliable is satisfied. The case report does not indicate that a handwriting examination was involved; however, I include the case to illustrate that document examiners have prevailed in pre-trial challenges on other expert issues than just handwriting.

310. *U.S. v Rayborn*, 491 F.3d 513, 2007 U.S. App. LEXIS 15742, 2007 FED App. 0250P (6th Cir.). 100 A.F.T.R.2d (RIA) 5046 (6 Cir. 2007)

Charlotte Ware, a forensic document examiner for the United States Postal Inspection Service, testified that Rayborn had signed certain tax returns.

COMMENTARY: A case of routine admissibility.

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311. *U. S. v Uhrich*, and related cases, 228 Fed. Appx. 248, 2007 U.S. App. LEXIS 12731 (4 Cir. 2007)

There were three defendants. Of the two other than Uhrich, one presented handwriting expert evidence to attack the other. However, though Uhrich claimed reversible error because of prejudice to him, there was no reversible error. Economy of court time justified evidence in one simultaneous prosecution that was irrelevant to another.

COMMENTARY: A case of routine admissibility.

## 2008

312. *In re Loraine Boley Ingersoll Trust. Ingersoll, et al., v Ingersoll*, 950 A.2d 672, 2008 D.C. App. LEXIS 271 (DC Cir. 2008)

In a very long decision, the sole mention of handwriting expertise is in Footnote 14: “John Hargett, an expert witness and forensic document examiner, testified that the [\*48] November 10, 1999 note ‘is the normal and natural writing of [Mrs.] Ingersoll.’”

COMMENTARY: A case of routine admissibility.

313. *Sow v Mukasey*, 546 F.3d 953, 2008 U.S. App. LEXIS 24061 (8 Cir. 2008)

Sow, petitioner for asylum, submitted two birth certificates. “The Forensic Document Examiner (‘Examiner’) attested that the typewritten certificate was in all likelihood a forgery, noting that it was produced on a photocopier and did not conform to the high quality printing process used in the production of similar documents. Although the Examiner could not definitively authenticate the handwritten certificate, he stated that it was ‘probably what it purports to be.’”

COMMENTARY: Assuming use of ASTM terminology, “could not definitively authenticate” suggests that the examiner did authenticate the handwritten certificate but did so at lower level of assurance, either probably or very probably.

314. *U.S. v Elfgeeh and Elfgeeh*, 515 F.3d 100, 2008 U.S. App. LEXIS 3169 (2 Cir. 2008)

A handwriting expert testified to defendants’ handwriting being on checks and deposit slips.

COMMENTARY: A case of routine admissibility.

315. *U.S. v Kittrell*, 269 Fed. Appx. 338, 2008 U.S. App. LEXIS 5659 (4 Cir. 2008)

A questioned documents examiner opined that Kittrell “probably” wrote the demand note used in a bank robbery.

COMMENTARY: A case of routine admissibility.

316. *U.S. v Magers*, 535 F.3d 608, 2008 U.S. App. LEXIS 15722 (7 Cir. 2008); post-conviction relief denied, *Magers v. U.S.*, 2009 U.S. Dist. LEXIS 38973 (N.D. Ind., May 6, 2009)

“The government also called a forensic [\*3] document examiner who told the jury that the letter to the President was ‘probably’ sent by Magers. Similarly, a handwriting expert testified that he possessed the ‘highest level of confidence’ that the letter to the Chief Justice was sent by Magers.” The letters also contained an innocuous powder that recipients could reasonably take to

be threatening.

COMMENTARY: Part of the evidence tying the letters to Magers was that the same preprinted forms and papers were found in his prison cell and the envelopes had the prison's name on them.

317. *U.S. v Marti*, 294 Fed. Appx. 439, 2008 U.S. App. LEXIS 20007 (11 Cir. 2008); denial of motion for new trial, *U.S. v Marti*, 2008 U.S. Dist. LEXIS 35482 (S.D. Fla., Apr. 30, 2008); affirmed, 2009 U.S. App. LEXIS 5069 (11 Cir. 2009)

"Danielle Seiger, an FBI forensic document examiner, examined 401 documents that were either prescription forms or documents from patient files and compared the writing on them to Marti's known signature. Seiger identified some of the signatures on patient charts as Marti's authentic signature. However, she found that the majority of the documents contained 'simulated signatures,' which a layperson would refer to as 'forgeries.' Specifically, she concluded that the signatures [\*8] on each of the prescriptions that form the basis of the substantive counts were either simulations or 'not comparable to the known signatures of Dr. Marti.' Seiger testified that many of the simulations appeared well-practiced. Based on this testimony, the government argues that at least some of them were 'authorized simulations,' meaning Marti authorized someone else to sign his name on the documents. Seiger did not attempt to determine whether documents had been altered after Marti signed them."

COMMENTARY: This is an admirable condensation of expert testimony. Experienced document examiners can recognize the understated hours of labor and quality work. The prosecutor's logic is another matter. If Marti signed the documents, he is guilty. On the other hand, if he did not sign them, he is guilty.

318. *U.S. v Owens*, conviction remanded, 424 F.3d 649 (7th Cir. 2005); conviction affirmed, sentence remanded, 298 Fed. Appx. 505, 2008 U.S. App. LEXIS 22942 (7 Cir. 2008)

In a case of routine admissibility, a document examiner identified Owens as writer of a holdup note that his cousin used to rob a bank while Owens waited in the getaway car.

## 2009

319. *Barrie v Holder*, 2009 U.S. App. LEXIS 10571, 2009 FED App. 0337N (6 Cir. 2009)

The government requested a reconvened hearing because a forensic report had become available. At the reconvened hearing the Immigration judge heard testimony from a document examiner with Department of Homeland Security that Barrie had presented false documents.

COMMENTARY: A case of routine admissibility.

320. *Solorzano, et al., v U.S. Attorney General*, 304 Fed. Appx. 850, 2009 U.S. App. LEXIS 109 (11 Cir. 2009)

Donna Eisenberg, a forensic document examiner for the Department of Homeland Security, testified. She could not offer an opinion as to whether certain letters were authentic. "However, she was suspicious of the October 2001 letter because the envelope bore a postal cancellation date of 28 July 2000, predating the letter within it by over a year. *Id.* at 70. She made no finding

as to whether the postal cancellation stamp was authentic, but ‘took it at face value.’ *Id.* On cross-examination, she testified that she could not authenticate [\*7] the Gaula reports and had no experience with Gaula documents. *Id.* at 73.”

COMMENTARY: Ms. Eisenberg was obliged to give her best evidence when called to testify. The report shows a candid statement of the limitations she labored under, which speaks well for her integrity.

321. *U.S. v Clark*, 577 F. 3d 273 (5th Cir. 2009)

Defendant took fees as a tax preparer but filed false returns. An IRS handwriting expert offered evidence of Clark’s writing on some documents.

COMMENTARY: A case of routine admissibility.

322. *U.S. v Mitchell*, No. 08-10323. United States Court of Appeals, Ninth Circuit. Filed October 2, 2009.

It was not error to allow “Marguerite McHenry, the government’s expert forensic document witness, to testify that she believed Mitchell authored the demand note recovered from the Compass Bank robbery.” Further, “The court is not required to hold a separate Daubert hearing, so long as it makes an explicit finding of reliability. [Citation omitted.] Failure to make the explicit finding is harmless where the expert’s qualifications and experience, and the relevance and value of the testimony to the jury, satisfy the requirements. *Id.* at 583.

“Extensive pre-trial briefing and argument informed the court of McHenry’s qualifications and experience, which also were presented to the jury. McHenry’s testimony of handwriting analysis procedures satisfied the Daubert reliability criteria.”

COMMENTARY: Another defense attorney seems to have paid attention to the eminent law professors rather than to the courts as to what the law is or is not, and to the same pros rather than to knowledgeable experts as to what technical and scientific reality is.

323. *U.S. v Ozuna*, 561 F.3d 728 2009 U.S. App. LEXIS 7034 (7 Cir. 2009)

Drugs were found in a search of Ozuna’s truck. “The district court initially suppressed the evidence from the search because the government had failed to prove by a preponderance of the evidence that Ozuna consented to the search.”

Upon the Government’s motion to reopen the suppression hearing and receive expert handwriting evidence, the defense argued, among other things, that it would be prejudicial to do so without a handwriting examiner for the defense. At the reopened hearing, defense expert, Ellen Schuetzner, explained that the problems she saw in Ozuna’s purported signature on the consent form could be from a poor pen or because the document had been bathed in a chemical for fingerprints before she examined it.

James Regent for the prosecution testified to the “highest degree of confidence” that Ozuna had signed the consent form. “He explained that the writing appeared natural, that he did not find evidence of simulation, and that all dissimilarities between the questioned and known signatures were within the expected range of variation.”

The court explained that it gave little credence to Regent’s conclusion but said it found both experts’ testimony helpful in conducting its own examination of the signature, after which it

concluded by a preponderance of the evidence that Ozuna had signed the document.

COMMENTARY: Presumably Regent examined the document before it was bathed with the chemical, otherwise his opinion would have been the same as Schuetzner's. As to "the expected range of variation," the defense attorney should have asked for the reasonable bases of the expectation and whether it could be demonstrated from Ozuna's genuine signatures. Regent co-authored one paper and authored another, both excellent, in *Journal of Forensic Sciences*, January 1977.

324. *U.S. v Robinson*, 2009 U.S. App. LEXIS 6703 (5 Cir. 2009)

A document examiner testified that Robinson endorsed some forged checks.

COMMENTARY: A case of routine admissibility.

325. *U.S. v Silva*, 554 F.3d 13, 2009 U.S. App. LEXIS 1277 (1 Cir. 2009)

A handwriting expert testified for the defense for the limited purpose of impeaching the credibility of a prosecution witness.

COMMENTARY: A case of routine admissibility.

326. *U.S. v Teter*, 2009 U.S. App. LEXIS 8194 (8 Cir. 2009)

"[Teter's] discovery that his attorney had failed to pursue obtaining a handwriting expert, and his belief that such an expert would have helped him achieve acquittal at trial for a crime he admitted committing, did not constitute a fair and just reason for withdrawing his plea.... Accordingly, we affirm the district court's judgment, we grant counsel's request to withdraw, subject to counsel advising Mr. Teter of his right to file a petition for writ of certiorari, and we deny Teter's motion for appointment of substitute appellate counsel."

COMMENTARY: There was no expert testimony; indeed, the decision obviates the possibility of such testimony. I include the case for the irony of defendant's appeal. Hopefully the Justices had in mind the scant likelihood of Mr. Teter's finding the kind of handwriting expert he required.

## 2010

327. *Riddick v US*, No. 07-CF-875 (DC Cir. 2010)

Riddick's conviction for second degree murder of his girl friend and other offenses is affirmed. One issue was whether denying admission to a handwritten note was error.

"During a search of Barrera's bedroom, police found, in the top drawer of a corner cabinet, a sheet of yellow lined paper on which the following was handwritten: 'My life is going down the drain more and more George is pulling away from me more now[.]'[ 9 ] The government had lost the original sheet of paper at some point before trial, but had preserved a copy, which the defense sought to introduce into evidence. Although acknowledging that the handwriting on the paper could not be authenticated as that of Barrera (since a handwriting expert would need the original to be able to opine on the issue), the defense argued that the writing was evidence of Barrera's state of mind and was relevant because it suggested appellant 'was the one who was leaving and that [Barrera] was upset about that and that, therefore, she might take steps to stop him' by

pulling a gun on him.”

There is extended discussion of arguments pro and con whether the ruling not to admit the note was abuse of discretion, the defense position eventually losing out. The discussion gives one a good glimpse of legal argument and judicial thinking processes.

COMMENTARY: First, the prosecution should not once more have had the benefit of losing primary evidence, which it does in this case. Second, a copy may well be authenticated, though not definitely or beyond a reasonable doubt. However, that would not be the defense’s burden of proof since it merely need raise a reasonable doubt, and copies of handwritten material are often authenticated to a reasonable certainty, which, I submit as a lay person regarding legal questions, in this case would support a reasonable doubt to the defendant’s benefit. Due to other considerations raised in the case report, the note would require other supporting evidence to establish a reasonable doubt. Nevertheless, when you need several keys to unlock a door you have to open, why agree to throw away one of them?

328. *U.S. v Tenerelli*, 614 F.3d 764 (8 Cir. 2010)

At trial and on appeal defense argued that handwriting expert Runyon should not have been permitted to testify on basis of late disclosure of her report. The prosecution claimed it had given the report as soon as it had received it, while defense knew of the coming testimony in other ways. The Eighth Circuit ruled that Tenerelli had not shown how he had been prejudiced by the alleged late discovery.

COMMENTARY: I suspect this is another case of all parties being equally bound by the rules, but the prosecution being more freely excused from them.

329. *Zou v U.S. Attorney General*, No. 09-10716. (US Ct. App. 11 Cir. 2010)

Elaine Wooten, a forensic document examiner with the Department of Homeland Security, issued a report that some documents submitted by Zou were forgeries while others were suspect. Zou asked the court for a subpoena to have Wooten testify so she could be cross-examined, but the Government attorneys said they would produce her so that a subpoena was unnecessary. They promised twice then admitted they had never even talked to her about testifying. Nevertheless, the court credited her report over the testimony of Larry Ziegler, a former government forensic document examiner. Ziegler had testified that some of Zou’s documents were genuine while others could not be determined whether they were or not. The Court of Appeal granted Zou an entirely new trial because of false promises by government attorneys regarding the production of Wooten which violated his constitutional right to a fair hearing.

COMMENTARY: It is refreshing to see no excuses made for government attorneys misrepresenting things and/or deceiving the court and the opposing party. As I express elsewhere herein, when any violation of the rules by government attorneys occur, the court most often excuses it since the argument by the government that it had no effect on the outcome is accepted. Of course, if it had no effect on the outcome the violation would not have been so cleverly and deliberately executed by the same government attorneys who are pronounced to be cleansed of all guile. I submit that every violation of rule, particularly of the Constitution, that a government attorney makes should have an automatic and punitive effect for the attorney committing it and the agency permitting such practices, usually the Office of the Attorney General.

## 2011

330. *In re Dead Oak Estates, Inc., Debtor; Burkart and Vineyard, v Kupka*; BAP No. CC-11-1323-KiDJu, Bk. No. 08-28230-MM, Adv. No. 09-02730. (Bankr. App. Panel, 9 Cir. 2011)

David Moore and James Blanco testified for opposing sides.

“On cross-examination, Moore testified that he was not asked to determine whether Cynthia’s questioned signature was written by Robert. He did opine, however, that since their signatures were so sufficiently dissimilar it would be like comparing apples and oranges, and he would be unable to determine whether or not Robert wrote Cynthia’s signature.”

On the contrary, Blanco testified “that he saw no traces of Robert’s signature characteristics in Cynthia’s signature that indicated Robert signed for her.”

COMMENTARY: There were other issues the two experts testified to, but this was the key issue. If the two signatures were like apples and oranges, then, with no trace of apple in the orange or of the orange in the apple, the experts should agree. When experts, attorneys and judges talk about not being able to compare apples and oranges, I always think I would hate to send them to the store to buy either one. No telling what one will return with if not being able to compare the two to determine which is which. Or they might bring back potatoes or coconuts.

331. *Donald v Spencer*, 685 F. Supp. 2d 250 (Dist. Ct., D. MA 2010); affirmed, 656 F. 3d 14 (1 Cir. 2011)

At his original trial for rape, kidnaping and related crimes, Donald was convicted. Part of the evidence was that a document examiner identified him as the writer of certain documents. Various appeals in state court availed him nothing, and Federal District Court affirmed denial of post conviction relief by the state courts, and it in turn was affirmed by the federal court of appeals.

COMMENTARY: A case of routine admissibility.

332. *Pabon v Mahanoy*, 654 F. 3d 385 (3 Cir. 2011)

At page 390: “At trial, Pabon attempted to repudiate his confession. He presented testimony from a forensic document examiner that the signature on his confession was unlikely his own.... In rebuttal, however, the DA presented its own document examiner who testified that the signature on the confession was likely Pabon’s.”

COMMENTARY: A routine case of admissibility of two experts, one of whom was definitely wrong. Which one? Apparently the jury thought the latter was correct, since they convicted, and the case report said the confession was the strongest evidence the prosecution had.

## 2012

333. *Pettus v U.S.*, 37 A. 3d 213 (DC: Court of Appeals 2012)

COMMENTARY: Please read the case report for it offers a neat summary of all such hearings and decisions. This commentary will be very editorial, offering repeated critique of repeated assertions from both sides, though I hope with more literary creativity than the repeated assertions ever offer.



Reading this case report will relieve you from reading a raft of others, since it gives all the standard arguments on either side for a challenge under *Frye*, along with several of the major big name witnesses to little intellectual contentions. For the Government, FBI document examiner Hector Maldonado was trial expert, and Diana Harrison of the FBI was expert at the *Daubert* hearing. She cited ASTM and SWGDOC in support of the admissibility of handwriting expertise. She described the method they used, which simply yearns for critical analysis. Among other questionably reliable practices, as usual one expert does the work and another in the same lab “peer reviews” it by using the exact same method with the exact same steps and making the exact same observations. Does anyone think such scientific mimicry will come up with other than the exact same result?

Bolstering things for the Government are the allegedly independent researchers, Kam via published studies and Srihari in person. Why does not the opposing party in these hearings present the intimate, mutually rewarding, long standing interrelations between academicians and their forensic clientele? The researchers are kept because they produce the needed results that give an aura of reliability to the unchanging practices of governmental agencies with money to reward desired results with more contracts. If all the moneys came from an entirely independent funder with no connections to the forensic discipline under investigation, and if the funds were put out to blind bidding, one’s skepticism might be put to rest.

The lone defense witness at the hearing was Mark Denbeaux, who later was dubbed a non-scientist, and whose opinions were such the usual repetitive musings that I submit he should testify by a one-time video recording to save parties all much time and money. The Defense enlisted the assistance of the NRC Report on the forensic sciences, but all these arguments were set aside with more credit to the report than it deserved.

334. *U.S. v Elder; U.S. v Solomon*; 682 F.3d 1065 (8 Cir. 2012)

Defendants were convicted of illegally prescribing controlled substances.

At page 1070: “At trial, Dr. Elder admitted he wrote the 544 original prescriptions but disputed knowing they were sent to or filled by TMS and questioned whether the refill authorization signatures were consistent with his signatures on the original prescriptions. Rostie testified that, on one occasion, she verified the legitimacy of prescriptions directly with Dr. Elder. The government’s handwriting expert testified it was ‘highly probable’ the refill authorization initials were Dr. Elder’s. Dr. Elder claimed to examine all patients named in the prescriptions, but neither Dr. Elder nor his employers could produce records for any patient”

Additionally, Elder disguised his handwriting while being interviewed by agents from DEA.

COMMENTARY: The case report did not specify that the handwriting expert testified to the disguised handwriting nor how it was determined. Also, not mentioned is a defense motion to hold a *Daubert* hearing on admissibility of the prosecution’s handwriting expert. I have not found whether or not a hearing was granted nor what the ruling was on the motion which I read at <http://www.juris99.com/texas/pdf/doc50.pdf>.

335. *U.S. v Fox*, No. 11-40191. (5 Cir. 2012)

COMMENTARY: In a case of routine admissibility, handwriting expert Kenneth Crawford gave testimony for the Government, but nothing is said of its nature.

336. *U.S. v Heard*, No. 08-1426. (US App. 6 Cir. 2012)

Footnote 1 reads: “The government also called an FBI agent to provide a summary of the contradictory information that Heard provided to the various entities, as well as an employee of Payne-Pulliam who testified that Heard’s mother was employed at Payne-Pulliam full-time during the time she was receiving wage-loss payments. The government called a handwriting analysis expert as well.”

COMMENTARY: One of us, whoever it was, is merely mentioned as an incidental afterthought. Another case report that gives us cause for humility as to our indispensability.

337. *U.S. v Taylor*, No. 10-10583. (9 Cir. 2012)

On the first day of trial the Government produced the report of its handwriting expert which it itself had just received. Defense counsel had done nothing about the prospect of which counsel had been previously notified, nor did anything to obtain an opportunity for a defense expert. Thus, for these and other reasons defendant had no complaint.

COMMENTARY: This is another case supporting the unwritten and unstated rule that negligence by defense counsel is the sole responsibility of defendant while ill-advised action by defense counsel is due to some kind of astute tactical or strategic consideration, being both unrecorded and unfathomable.

338. *Woolley v Rednour*, No. 10-3550. (US Ct. App. 7 Cir. 2012)

Woolley was convicted of double murder and other felonies in Illinois court. Having been denied habeas corpus relief in Federal court, he was granted leave to file in Federal court on basis of ineffective counsel. Counsel was ineffective but it was harmless error. The handwriting expert was called to authenticate defendant’s signatures on two handwritten confessions obtained by a cellmate, Tomsha:

“At trial, the prosecution produced an FBI handwriting expert who confirmed that the signatures on the documents matched Martin’s and did not belong to Tomsha. The expert could not establish that the information contained inside the documents matched Martin’s handwriting. But the expert explained that Martin refused to provide a natural handwriting exemplar to permit an adequate comparison.”

Footnote 7 reads: “The expert could not definitively conclude whether Martin authored the body of the documents. But even this fact does little to help Martin under the circumstances. The expert testified that Martin intentionally refused to provide a natural handwriting exemplar. A jury could reasonably infer from this testimony alone that Martin sought to defeat the expert’s handwriting identification because he knew it would inculpate him. Again, Martin has proposed no defense on this point.”

COMMENTARY: It seems that the prosecution for once did not reward the jailmate’s testimony with leniency in his own case since it was completed and he had just about served out his sentence. At least the reports seems to me to hint of this.

#### D. U.S. SUPREME COURT.

I have not found a decision by the U.S. Supreme Court addressing handwriting expertise post-*Daubert*. All cases reported as appealed to the Supreme Court are noted “certiorari denied.” One might infer that the ruling by the particular Court of Appeals upholding the admissibility of the expertise was acceptable to the Justices of the Supreme Court, otherwise they would have corrected the ruling. I do not know whether that is standard and acceptable legal reasoning, but it certainly would seem to be reasonable and logical to any rational, non-legal mentality. It seems to me at least that it would be an application of “qui tacet consentire videtur.”

## II. STATE COURTS.

### A. ALABAMA CASES.

#### *1. Alabama Courts of Appeal.*

1994

339. *Clemons v Clemons*, 656 So. 2d 831 (AL Ct. of Civ. App. 1994)

In a divorce action the wife used the testimony of document examiner Lamar Miller to support a motion. He testified that signatures on a copied document were authentic and gave no evidence of having been altered, manipulated or transferred.

“Brian Carney, a document examiner retained by the husband, testified that he had examined two papers said to be copies of the original ‘receipt,’ ‘Plaintiff’s Exhibit Two’ 833\*833 and ‘Defendant’s Exhibit Two.’ Carney stated that ‘Plaintiff’s Exhibit Two,’ the copy Miller had examined, was a ‘less detailed copy, meaning a poorer quality copy for examination purposes’ than was ‘Defendant’s Exhibit Two,’ which he described as ‘an earlier generation or better quality copy.’ Carney testified that the results from an examination of the earlier generation copy would be more reliable.

“Unlike Miller, Carney had determined that the date on the copy designated ‘Plaintiff’s Exhibit Two’ had been altered and that the signature on the copy designated ‘Defendant’s Exhibit Two’ had been manipulated and transferred onto that document. Further, Carney testified that because ‘Plaintiff’s Exhibit Two’ was of poor quality, he could not determine whether the signature on it had been manipulated. However, Carney concluded that even though it was highly probable that the signature on ‘Defendant’s Exhibit Two’ was the ‘genuine’ signature of the husband, he did not know how the signature had come to be upon that document.”

Since she could not prove what she needed to, the wife’s motion was properly denied.

COMMENTARY: “Unlike Miller....” What was ultimately unlike in the two expert testimonies was Carney’s thoroughness, beginning with determination of the limitations he labored under and how to make the best of the materials available. This is a fine lesson for all of us in proper work ethics.

1999

340. *Ballard v State*, 767 So. 2d 1123, 1999 Ala. Crim. App. LEXIS 28 (AL Ct. Cr. App. 1999); *Ex parte Halycon Ballard*, writ of certiorari quashed as improvidently granted, 767 So. 2d 1142, 2000 Ala. LEXIS 122

Dr. Richard Roper testified that an exculpatory invoice was fabricated. The type was used later than dated, and the handwriting appeared “forced” or to be a tracing. However, defendant could not be eliminated as the author of the invoice. The prosecutor asked Roper if defendant could have retained Lamar Miller, who was more qualified than Roper, to examine the invoice and later argued she did not because she knew it was false. This argument was error, but

harmless due to the overwhelming evidence of guilt.

The text in the Supreme Court decision is of the dissent which argues the prosecutor had committed reversible error in arguing consciousness of guilt from fact defendant had not had Miller examine the invoice.

COMMENTARY: This case illustrates that an inconclusive opinion might at times be helpful to the fact-finder. That defendant could not be eliminated, combined with fact only defendant could have benefitted by the false invoice, replied to defendant's position that she had nothing to do with the invoice.

## *2. Alabama Supreme Court.*

### 1999

341. *Eubanks v Hale*, 752 So.2d 1113, 1999 Ala. LEXIS 306 (AL 1999)

A case of disputed results in sheriff's election. Statute and rules of court say handwriting evidence by expert or witness familiar with person's writing shall be permitted. Trial court apparently did not permit Dr. Richard Roper to testify because he said no when judge asked did he look at certain writings with a telescope, which Supreme Court took to have meant to be microscope. Since time was of the essence in resolving the dispute, Supreme Court did not remand but counted votes in accordance with what Roper's opinion would have been if he had testified, and it did not change things due to other evidence.

COMMENTARY: I break my own rules by including this case since Dr. Roper was not permitted to give his testimony in chief. Apparently, he had been subjected to some *voir dire* since the trial judge did ask about the telescope. I include it as a caution to all of us that we verify why a proffered expert was not allowed to testify before using it against the expert or relating it to others in a way that might denigrate the expert.

### 2002

342. *Hayes, et al., v Apperson*, 826 So. 2d 798, 2002 Ala. LEXIS 38 (Ala. 2002)

A handwriting expert testified about the effort needed to imitate a sick person as shown by signature on a will.

COMMENTARY: A case of routine admissibility.

### 2007

343. *Davis v Sterne, Agee and Leach, Inc., et al.*, 965 So. 2d 1076, 2007 Ala. LEXIS 18, 61 U.C.C. Rep. Serv. 2d (Callaghan) 803 (Ala. 2007)

In support of its motion for summary judgment, "Sterne Agee attached excerpts from the deposition testimony of Steven A. Slyter, Davis's expert witness on handwriting analysis, establishing that he believed an expert's assistance would be required to analyze Mr. Davis's signatures on the three COB forms to conclude that [\*6] the signature on the December 8, 2001, COB form was not that of Mr. Davis.

“In opposition to Sterne Agee’s motion for a summary judgment, Davis argued that §§ 7-8-115 did not protect Sterne Agee from liability because, she argued, Sterne Agee did not satisfy the statutory requirement that it was acting ‘at the direction of its customer or principal’ when it disbursed the proceeds of the IRA to the sons. In support of her argument, Davis presented evidence, in the form of the testimony of Slyter, that the signature on the December 2001 COB form was not that of Mr. Davis. She argued that a genuine issue of material fact was created as to whether the signature on the document was forged and whether Sterne Agee had breached its duty of care in disbursing the proceeds of the IRA. She also argued that Sterne Agee had presented no evidence to refute Slyter’s testimony that the signature on the December 2001 COB form was not Mr. Davis’s and that Daniel and Sterne Agee had breached the standard of care in servicing Mr. Davis’s IRA.”

COMMENTARY: It seems that during the deposition either Mr. Slyter did not give his opinion regarding the falsity of Mr. Davis’s signature or Sterne Agee was not paying attention.

### *3. Alabama Court of Criminal Appeals.*

#### 2000

344. *Evans v State*, 794 So. 2d 415, 2000 Ala. Crim. App. LEXIS 123 (Ala. Ct. Crim App. 2000)

Dr. Richard Roper testified extensively on what writing on voting documents was or was not written by Evans.

COMMENTARY: No challenge to Dr. Roper’s testimony is indicated in the case report.

345. *West v State*, 793 S2 870, 2000 Ala. App. Crim. LEXIS (Ala. Crim. App. 2000) [There is a complex series of further appeals from 2000-2003 going up to the U.S. Supreme Court and back, but none seem to address further the issue of document examination.]

In a complex chronology, the prosecution was held to have made timely disclosure to defense counsel of the documents in question and of the testing with its resulting report. Appellant/defendant West was convicted of murder, and letters he had written to his girlfriend had had portions obliterated by her before they were handed over to the prosecution. Steven Drexler, document examiner for the State, tried various techniques until he could make the writing under the obliterations clearly legible. They amounted to confessions by defendant. Alabama is on the *Frye* standard, and what Drexler did was not novel, being based on his knowledge of how to use magnification, lighting and chemicals, and the results were easily read by anyone. It seems that by the time trial ended the defense had had more time to test the documents, with assurance from the Court that the costs would be covered, yet they did not do so.

COMMENTARY: Some portions of questioned documents examination are strictly technical, as Drexler’s work was in this case. Other is what any ordinarily sensible person would do or not do, while the finest is, some of us would maintain, truly scientific. This case shows that the Alabama Court of Criminal Appeals knows the difference when it sees it, and that is heartening to those of us doing practical work in pursuit of the facts. The reports indicate Drexler was a tenacious and resourceful investigator.

## 2007

346. *Egbuonu v State*, 993 So. 2d 35, 2007 Ala. Crim. App. LEXIS 90 (Ala. Ct. Crim. App. 2007)

A handwriting expert identified defendant's handwriting on credit card documents and a victim's checks. One of his two convictions for identity theft was overturned as an impermissible conviction.

COMMENTARY: A case of routine admissibility.

347. *Woods v State*, 13 So. 3d 1 (AL Ct. Crim. App. 2007)

"While Woods was in jail, a deputy found hanging on the wall of his cell a drawing with the heading 'Nate \$ Nookie.' The drawing depicted two men shooting firearms near a street sign indicating the intersection of '18th Street and Ensley'; the drawing depicted three flaming skulls in the gun blast from the automatic weapon one of the men is shooting. The apartment where the officers were killed was on 18th Street in Ensley. When the deputy took the drawing, Woods protested, stating that the drawing was his and that he wanted it back. In addition, modified rap-style 30\*30 song lyrics were taken from Woods's cell; the document included the statements, 'I'm a fuckin murderer' and 'I drop pigs like Kerry Spencer.' (State's Exhibit 337-A.) Steve Drexler, a document examiner, testified that based on his comparison of that document with a known sample of Woods's handwriting, he had determined that Woods was the person who wrote the words on the document seized from his cell."

COMMENTARY: One fears we have so deprived our young people of a moral, refined and cultured education in a very much changed interpretation of American freedom divorced from responsibility and respect for others, that we may self-destruct as a society. Hopefully not.

## 2008

348. *Williams v State*, 2008 Ala. Crim. App. LEXIS 141 (Ala. Crim. App. 2008)

Steven Drexler testified and stated various degrees of certitude that Williams did or did not write notes found at the scene of the crime. Terms used were, "indications," "could not say one way of the other," "probably," "strong indications," and "at least some of the notes were probably written by."

COMMENTARY: One could not say Drexler failed to adhere to ASTM standard on terminology just because he did not talk from a verbal straight jacket. However, it is best to use precise, standardized terms to report precision in thought and work product.

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## B. ALASKA CASES.

### 1. Alaska Supreme Court.

#### 2001

349. *Crittell v Bingo, et al.*, Supreme Court of Alaska, No. S-9468, Nov. 9, 2001

At 21, ¶48-50, Richard Williams, ex-FBI handwriting and typewriting expert, is discussed. At 22, ¶51, Edna Robertson's opinion on a signature is discounted in favor of Williams's. But the court rejects his opinion that, since so few typewriters are used these days, certain general characteristics on one document justify the conclusion that the same machine was used on another.

COMMENTARY: On the typewriting it is excellent logic by court and poor logic by Williams, but a similarly poor logic is at times used in handwriting identification.

#### 2006

350. *Williams v Williams and Ballow*, 129 P.3d 428, 2006 Alas. LEXIS 2 (Ala. 2006)

At page [\*22]: "Christine argues that the court clearly erred in finding that Pete signed the annuity agreement because she presented testimony from a handwriting expert questioning the authenticity of the signature. But there was testimony supporting the court's finding that Pete signed the annuity agreement and there was therefore no clear error."

COMMENTARY: A case of routine admissibility of a not too persuasive expert testimony.

## C. ARIZONA CASES.

### 1. Arizona Courts of Appeal.

#### 2009

351. *Castro v Ballesteros-Suarez*, 213 P. 3d 197 (AZ Ct. App. 1st Div. 2009)

"¶¶ 44 Finally, Mrs. Suarez argues that the evidence was insufficient to establish that Decedent's signature on the American Family change of beneficiary form was a forgery. Because the forgery was a finding of fact, it is binding unless clearly erroneous or unsupported by any credible evidence. See Zaritsky, 198 Ariz. at 601, ¶¶5, 12 P.3d at 1205. Our review of the record reveals that there is substantial evidence which supports the court's factual determination.

"¶¶ 45 The court found that Decedent's first name, Adolfo, was misspelled on the change of beneficiary form as 'Aldolfo.' The forensic document examiner, who reviewed the form with known handwriting samples, testified that she did not think Decedent would misspell his first name because he was illiterate and could only print his name. She testified that it was 'highly probable' that the Decedent did not sign the change of beneficiary form and there was a 'high probability' that the signature was a forgery. Her testimony, coupled with Ms. Castro's testimony that she did not recognize the signature on the American Family form as her brother's signature,



was sufficient for the court to find that the form had been forged.

“¶¶ 46 Although Mrs. Suarez challenges the finding with four different arguments, there is substantial evidence to support the finding that the signature was a forgery. Accordingly, we will not substitute our judgment for the trial court’s judgment. As a result, the trial court did not err in determining that the Decedent did not sign the American Family change of beneficiary.”

COMMENTARY: Since this statement of the law seems to be the same for all appellate courts considering the same scenario, I quoted it at length. If it were not unwarranted skepticism, I would suspect that when appeal justices say, “We will not substitute our judgment for the trial court’s judgment,” they really think the trial court got it wrong but adhere to a course of action that requires less action and more judicial solidarity. But not being tinged with the least skepticism, I shall not even mention the possibility.

352. *State v Bacinski*, 2009 Ariz. App. LEXIS 283

“At trial, Bacinski maintained that another person had committed the offenses. Although the state’s expert witness testified there were some ‘indicators’ suggesting Bacinski could have written and signed various checks, he admitted that other checks could have been written by someone else. He testified further that some checks, such as the check that was the basis for one [\*4] of the forgery charges, appeared to have been written by two different people. And, several other people lived or spent time in Bacinski’s house at the time the various checks were cashed. One of those people was her brother, Stanley.”

It was error for the judge to have upheld the State’s motion to exclude defense evidence that Stanley had stolen and forged his wife’s checks, especially given the expert testimony. Consequently, convictions on four of six counts were reversed and remanded.

COMMENTARY: The unnamed expert certainly appears to be of a commendably independent and objective mind.

2011

353. *Amy B. v Gregory B.*, 1 CA-JV 10-0221. (AZ Ct. App. 1 Div. 2011)

“¶¶ 7 A forensic document examiner, Ms. Lines, testified that her review of the original signed documents indicated that it was very probable that the signatures were all the same and stated that she was ‘virtually certain’ that all the signatures were ‘executed by one writer, the same writer.’ Ms. Lines’ written findings concluded as follows:

“Although the signatures appear to be elongated scrawls, they are rapidly written one stroke signatures that contain repetitive complex movements; therefore, one writer very probably executed all of the signatures. The lack of identifiable letter forms in the signatures prevented a conclusive finding.”

“Ms. Lines testified that it was ‘extremely unlikely’ that any of the signatures were forged.”

COMMENTARY: Signatures of this type are certainly above average challenges.

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354. *In the Matter of the Estate of: Moonie H. Kong, Deceased. Stites, et al., v Kong, et al.*, Nos. 1 CA-CV 10-0419, 1 CA-CV 10-0899 (Consolidated). (Ct. App. AZ Division One 2011)

“Kathleen Nicolaides, a forensic document examiner for Affiliated Forensic Laboratory, testified that she received exemplars, which are known documents, that contained ‘extensive writing’ of handwriting and printing and signatures of Moonie from 1993 to 2007 to compare with the handwriting on the two wills. The exemplars were comprised of three canceled checks, a notarized quit elaim deed, a notarized durable health care power of attorney, three personal income tax forms, and five letters of correspondence. Nicolaides concluded that she had ‘[t]he highest level of confidence’ that the author of the exemplars ‘executed both the handwriting and the Moonie Kong signatures appearing on the wills.’ Nicolaides continued that ‘there was such a sufficient amount of evidence and the quality of the evidence was such that . . . [she] was able to reach a positive identification.’ The owner of Affiliated Forensic Laboratory reviewed Nicolaides’ findings and agreed with her conclusions. Nicolaides also stated that although a lay person may place significance on Moonie’s variance of the letter ‘g’ in his signature, as a forensic document examiner, she examined the differences and concluded that it was ‘within his habit’ and not significant.”

COMMENTARY: Another ease of routine bolstering by the opinion of an absent examiner, buddy to the testifying examiner, and in this case her boss, that is accepted and relied on by the trial court, apparently without objection and contrary to the rules.

355. *State v McNeese*, 1 CA-CR 10-0122. (AZ Ct. App. 1st Div. 2011)

Defendant, a peace officer on part duty due to injuries, issued a traffic citation using another officer’s name. He kept cash found in the ear and never logged it in or entered the citation into the system. The original citation was spoliated by chemieals used to raise fingerprints, but it was entered into evidence. A copy that the document examiner had made was also entered into evidence though it had the examiner’s notations on it. Objection was made against both being received into evidence, but no authority was cited, therefor the assignment of error was overruled on appeal.

COMMENTARY: Those of us who have worked for defendants in criminal cases have seen how critical documents are severely spoliated by chemical treatments such as ninhydrin. This effectively destroys some evidence before it can be recovered and hampers defense efforts to make a proper handwriting or other document examination. Courts seem to be a bit cavalier about this hampering of defendant’s right to develop exculpatory evidence. In one case I could clearly see indentations on the document, but the ninhydrin had so warped and stiffened it that no method could visualize the indentations. Additionally, such tests as for DNA are precluded.

356. *State v Thompson*, No. 1 CA-CR 10-0778. (AZ Ct. App. 1st Div. 2011)

A document examiner testified for defense as to who wrote a fraudulent check.

COMMENTARY: A case of routine admissibility.

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## 2012

357. *Cal X-Tra, et al., v W.V.S.V. Holdings, L.L.C., et al.*, 276 P.3d 11 (Div. 1 AZ App. 2012)

In a lengthy and complex case reversing previous ruling due to fraud on the court, the handwriting expert is mentioned in passing as saying a witness wrote on certain documents that the witness admitted to having written on.

COMMENTARY: Cases like this have two values for our purposes. They show handwriting experts are routinely admitted to testify and that they are often not very vital to the outcome.

358. *Leroy v Seattle Funding Group of Arizona, LLC*, 1 CA-CV 10-0714. (AZ Ct. App. 1st Div. 2012)

“Leroy denied signing the [faxed] Resolution, and an expert forensic document examiner testified that he was ‘one hundred percent’ confident that Leroy’s signature on the Resolution was a mechanical or electronic duplicate of Leroy’s original signature from the operating agreement.”

COMMENTARY: Leroy won handsomely at trial but lost a chunk of his winnings upon defendant’s appeal. Neither party was given attorney fees on the appeal since neither stated the basis for the request. Small details can determine large results. My Mom used to recite this: “For want of a horseshoe nail, the shoe was lost. For want of the shoe, the horse was lost. For want of the horse, the trooper was lost. For want of the trooper, the company was lost. For want of the company, the cavalry was lost. For want of the cavalry, the army was lost. For want of the army, the battle was lost. For want of the battle, the war was lost. For want of the war, the kingdom was lost. All for want of a horseshoe nail.” Check out each little nail in your next forensic report.

359. *State v Tocker*, No. 1 CA-CR 11-0681. (Ct. App. AZ Div. One 2012)

Checks of large amounts transferred sums from murder victim’s sole account to joint accounts with defendant. Document examiner testified that the murder victim had not written the checks.

COMMENTARY: A case of routine admissibility.

## D. ARKANSAS CASES.

### *1. Arkansas Courts of Appeal.*

## 2001

360. *Morton v Patterson*, 75 Ark. App. 62, 54 S.W.3d 137, 2001 Ark. App. LEXIS 618 (Ark. App. 2001)

In a will contest, two handwriting experts from the Arkansas State Crime Laboratory testified that decedent had not signed the codicil in question. The judge gave greater credibility to contrary evidence and found the codicil to be genuine.

COMMENTARY: A case of routine admissibility.

361. *Rabb v State*, 72 Ark. App. 396, 39 S.W.3d 11, 2001 Ark. App. LEXIS 49 (Ark. App. 2001); subsequent appeal, 2001 Ark. App. LEXIS 656 (Ark. App. 2001)

“For appellant’s second point on appeal, she argues that the trial court erred when it allowed the introduction of several writings [\*13] that were discovered at her husband’s home in California. The writings were used by the State as part of its proof in the conspiracy charge. The State’s handwriting expert testified that there were ‘strong indications’ that the handwriting was by appellant and that it was a ‘virtual impossibility’ that someone other than appellant had produced the writings in question. The expert also testified that the writings were of a common authorship.

“However, none of the questioned writings were included in appellant’s abstract. The failure of appellant to abstract a critical document precludes this court from considering issues concerning it.”

In the subsequent appeal the expert testimony was considered regarding the relevance of incriminating documents related to drug convictions which were affirmed.

COMMENTARY: A case of routine admissibility and an object lesson in doing a job correctly and completely.

#### 2004

362. *Cincinnati Life Ins., Co. and AON Risk Services, Inc. v Mickles*, 85 Ark. App. 188, 148 S.W.3d 768, 2004 Ark. App. LEXIS 159 (Ark. App. 2004)

A handwriting expert testified for Mickles that occupation on life insurance policy was written by someone other than applicant or agent taking the application.

COMMENTARY: A case of routine admissibility.

#### 2007

363. *Abdin v Abdin*, 94 Ark. App. 12, 223 S.W.3d 60, 2006 Ark. App. LEXIS 41 (2006); 101 Ark. App. 56, 2007 Ark. App. LEXIS 892 (2007)

Linda Taylor was Estate’s expert and Curtis Baggett plaintiff’s. Attack on Taylor, whom the court credited above Baggett, was that she had not considered age and health (she had said she would expect different effects than what the questioned signature showed) and she did not know Arabic (however her credentials were formidable). “By contrast were Baggett’s credentials. It was a credibility issue on which a court of appeals must give deference to trial judge.”

The 2007 report was an effort by plaintiff to recoup his costs from the estate, but the will was never admitted to probate as required.

COMMENTARY: Linda Taylor demonstrates that the fundamental principles of handwriting identification are not language specific, though each language or national script may have additional principles specific to it.

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2009

364. *Tapp v Landers*, 2009 Ark. App. LEXIS 208

At [\*3]: “Dawn Reed, a forensic document examiner, testified that she compared the purported signature of appellant on the lease with known samples of appellant’s signature taken from court documents. She opined that the signature on the lease was that of appellant.”

COMMENTARY: A case of routine admissibility.

2012

365. *Hankins v Austin, et al.*, 2012 Ark.App. 641 (AR App. Div. IV 2012)

“Thomas Vastrick, a forensic-document examiner, testified that, after comparing known writing specimens containing Willis’s signature, he had concluded that it was “highly probable” that Willis signed a check in the amount of \$47,800 but that Willis did not sign the deed. Vastrick testified that “highly probable” meant “virtually certain.” Vastrick testified, however, that various factors can affect a person’s signature, including the position of the person in relation to the document, age and illness, and effects of medication. Vastrick testified that there was no way to scientifically quantify how loss of muscle strength, as is common with cancer patients, would alter a person’s ability to sign his name and that this would differ from person to person.”

Later: “The trial court noted that, although Vastrick was sincere in his opinion that the deed was forged, his opinion was just that—an opinion—and Vastrick had admitted that he could not take into consideration factors such as muscle strength and effects of medication, both of which could have influenced Willis’s signature.”

Still later: “The trial court recognized the limitations of Vastrick’s opinion and chose to rely, instead, on Knight’s testimony that he was present and saw Willis signing the deed. We cannot say the trial court clearly erred in relying on Knight’s testimony in determining that the deed was not forged.”

COMMENTARY: I attended a seminar for expert witnesses given by a defense attorney who practiced before administrative law judges awarding disability benefits to workers. He quoted what a cynical third year law student had told him when he was in first year, stating that there is no one more cynical than a third year law student. The cynic had explained contradictory rulings by the U.S. Supreme Court this way: “They first decide where they want to go [for their decision], then figure out how to get there.” I suspect this is one of those instances, but at the trial level. Judges are judges at whatever level they judge. The following comment could be made for a number of cases discussed in this text, but thankfully for a small minority, whatever cynical law students say.

On cross-examination, the expert is asked about issues not related specifically to the opinion just given on direct. Hypothetical and theoretical questions are asked. The proffering attorney is not aware how to address these speculative questions on redirect, so they quietly lay by the wayside until at closing argument they are represented as either things the expert did not consider but that *clearly* would have altered the opinion if they had been. At least this expertise is so fraught with multiple possibilities that there is no reliable probability to any opinion offered.

Every speculative possibility is readily available to opposing counsel for argument and to the court for support to any decision in any direction that it feels is preferable.

As the reader goes through the various case summaries and commentaries on them, the reader might be alert to how often court decisions give every appearance of ultimately resting on sheer speculation, at other times on well founded speculation, but still speculation. The lesson for attorneys and expert witnesses? As an expert, do your best to offer solid, scientifically and technically based reasons for your opinion and make them case specific. As an attorney, you might as well address on redirect all seemingly innocuous questions of this type asked on cross-examination. Certainly your opponent is actually asking noxious questions, and you might as well go ahead and perfect your trust in your expert witness, because distrust may cause you to lose your case. After all, as in *Hankins* you might already have lost to some dream-world wondering your opponent has made to seem sound reality so that now you have nothing to lose but defeat.

## *2. Arkansas Supreme Court.*

### 2004

366. *Edmundston v Estate of Oral W. Fountain*, 84 Ark. App. 231, 137 S.W.3d 415, 2003 Ark. App. LEXIS 881 (Ark. App. 2003); reversed, 358 Ark. 302, 189 S.W.3d 427, 2004 Ark. LEXIS 451 (Ark. 2004)

All that is said is that handwriting experts testified.

COMMENTARY: A case of routine admissibility.

### 2006

367. *Flagstar Bank v Gibbins, et al.*, 367 Ark. 225, 238 S.W.3d 912, 2006 Ark. LEXIS 433 (Ark. 2006)

At page [\*7]: “The appellant relies on the testimony of its handwriting expert, who opined that the copies of the signatures on the deeds available in the present case were so lacking in quality that no conclusive determination of their authenticity was possible. The appellant also points to the dearth of contemporaneous signatures from Gibbins available in the instant case, and the fact that Gibbins was no longer able to provide a signature at the time of the trial.”

There was much other evidence of forgery, such as the notary testified that her notary stamp went missing for two weeks and was found on someone else’s desk and that she had been offered money not to testify. The Supreme Court affirmed the trial court’s finding that the deed defendants relied on was forged.

COMMENTARY: A case of routine admissibility.

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## 2008

368. *Save Energy Reap Taxes v Shaw*, 288 SW 3d 601 (AR 2008)

The judge considered the testimony of Dawn Reed, a forensic document examiner, in invalidating signatures on a ballot petition.

COMMENTARY: A case of routine admissibility.

## E. CALIFORNIA CASES.

### *1. California trial courts.*

## 2001

369. *People v Deip*, San Francisco, CA, Superior Ct. (2001?)

Defendant's Notice of Motion in *People v Olson* states that Mark Denbeaux was qualified as witness in evidential hearing on how bad handwriting expert evidence is.

370. *People v Olson AKA Soliak*, Case No. A325036. Notice of Motion to exclude any expert testimony concerning handwriting analysis. (Superior Court, Los Angeles, October 1, 2001)

COMMENTARY: This is included for two reasons. First, to illustrate the kinds of things one can find on the Internet by searching such terms as "handwriting AND expert" and individual names. Second, as an example of the tortuous reasoning processes of attorneys attempting to circumvent the plain and unequivocal provisions of the law when they are in the way of their client's avoidance of the truth.

The argument pretends to explain how the troubles that handwriting expertise has had with *Daubert* proved it did not meet California's *Frye* standard adopted in *People v Kelly*, 17 CA3 24, 130 CA Rpt 144, 549 P2 1240 (1976), and reaffirmed in the case *People v Leahy*, 8 CA4 587, 34 CR2 663 (1994). Even though, as this paper conclusively demonstrates, Federal Courts of Appeal already in 2001 had solidly sided with admissibility of handwriting expert testimony, the Notice of Motion pretends only the isolated District Court cases rejecting or restricting the expertise had ever happened. Naturally, no California court that I am aware of was ever misled by such lawyerly cleverness of argumentation and silliness of theory regarding expert handwriting testimony.

Olson eventually pleaded guilty, effectively defeating her attorneys' Notice of Motion to Exclude. She was later charged with murder in connection with one of the SLA bank robberies, to which she also pled guilty.

## 2008

371. *Elyaszadeh v Neman*, Los Angeles Superior Court, BC 328019, July 30, 2008

Mr. Blanco was plaintiff's handwriting expert and testified that it was "highly probable" plaintiff's signature on the key document was simulated. Mr. Howard Rile was defendant's handwriting expert and could not say whether plaintiff's signature was genuine or not. At page 8:

“However, Mr. Rile also admitted that he has a long-standing and serious professional dispute with Mr. Blanco which usually causes him to recuse himself when Mr. Blanco is on the other side of case.”

COMMENTARY: The judge said Neman was a “conn” and ruled against him, ordering counsel for both parties to submit briefs for the penalty phase.

## *2. California Courts of Appeal.*

### 1994

372. *Ripley, et al., v Constantine Pappadopoulos, et al.*, 23 Cal. App. 4th 1616, 28 Cal. Rptr. 2d 878, 1994 Cal. App. LEXIS 290, 94 Cal. Daily Op. Service 2381, 94 Daily Journal DAR 4414 (CA App 1994)

It was proper to award costs for the overhead projector plaintiff’s questioned document examiner used to illustrate testimony. However, the Court of Appeals deleted expert fees from the award of costs.

COMMENTARY: It is advantageous to have a guide on all rules concerning expert witnesses in the jurisdiction where one works as an expert consultant. In California there is *California Expert Witness Guide, second edition*, by Raoul D. Kennedy and James C. Martin, Oakland, CA, Continuing Education of the Bar. The publisher issues annual updates.

### 1995

373. *People v Tai*, 37 Cal. App. 4th 990, 44 Cal. Rptr.2d 253 (1 Dist 1995)

In a credit card case, the Fifth Amendment does not protect against compelling of handwriting exemplars, and the expert, David Moore, may testify as to disguise of same, which is evidence of consciousness of guilt.

COMMENTARY: The Court of Appeal stated that this precise issue of expert testimony as to disguised writing, had not been considered by California courts of appeal. However, *Corn v State Bar of California*, 68 Cal.2d 461, 67 Cal.Rptr. 401, 439 Pac.2d 313 (1968), addressed precisely that issue stating that it was proper for a handwriting expert from comparison of signatures to testify, first, that both were written by same person and, second, that the purported signature of payee on a warrant was so disguised as to deceive the average person into believing that a different person had written it, so that the expert addresses the issue of the writer’s state of mind.

### 1997

374. *Daum, et al., v Spinecare Medical Groups, Inc., et al.*, 52 Cal. App. 4th 1285, 61 Cal. Rptr. 2d 260, 1997 Cal. App. LEXIS 122 (C), 97 Cal. Daily Op. Service 1262, 97 Daily Journal DAR 1843 (CA App. 1997)

In a medical malpractice case the issue hung on whether the patient had been properly informed about the experimental nature of a procedure that incapacitated him and whether he had given his consent. “A forensic document expert testified that the signature [on the consent form]



was Mr. Daum's, and showed no changes that might indicate Mr. Daum was unable to see or read the document." However, the applicable legal requirements were not met, so the jury's finding for defendants was reversed, except for nonsuit for one doctor.

COMMENTARY: It is noteworthy that the expert could testify to what amounted to competency as indicated by the signature.

## 1999

375. *Kroupa, et al., v Sunrise Ford, et al.*, 77 Cal. App. 4th 835, 92 Cal. Rptr. 2d 42, 1999 Cal. App. LEXIS 1140, 2000 Daily Journal DAR 823 (Cal. App. 1999); review denied, 2000 Cal. LEXIS 1894 (Cal. 2000)

At page [\*8]: "Sunrise Ford's file on the Kroupa's lease also contained two 'trade-in' forms, one for each of Kroupa's two vehicles. These forms contained Mr. Kroupa's signature (although, despite the testimony of Kroupa's own handwriting expert, Mr. Kroupa denied ever seeing or signing them)."

Kroupa lost at trial but won on appeal.

COMMENTARY: A case of routine admissibility.

376. *Estate of Morris I. Brenner, Osborne v Brenner*, 76 Cal.App.4th 1298, 91 Cal.Rptr.2d 149, 1999 Cal. App. LEXIS 1090, 99 CA Daily Op Serv 9823, 99 Daily J DAR 12607 (CA Ap 1999); rev. den., 2000 Cal. LEXIS 3385 (CA 2000)

Handwriting expert testified that both original ink writing and photocopied writing portions of proffered holographic will were in decedent's hand. Trial court denied probate on theory that a holographic will had to be in original handwriting of decedent, but Court of Appeal ruled it need only be in decedent's own handwriting, so photocopied portion satisfied the statute.

COMMENTARY: The expert's degree of certainty as to the photocopied writing was not indicated, but since probate is in civil court, it seems that it need be more likely than not, by a preponderance of the evidence, which equates to "probable" in technical terms for handwriting opinions.

## 2000

377. *People ex rel. Lockyer v Superior Court of San Diego County, et al.*, 83 Cal. App. 4th 387, 99 Cal. Rptr. 2d 646, 2000 Cal. App. LEXIS 689, 2000 Cal. Daily Op. Service 7282, 2000 Daily Journal DAR 9615 (Cal. App. 2000)

Admission in evidence of documents that had been seized by law enforcement did not violate Fifth Amendment rights since they had been authenticated by a handwriting expert, not by the defense attorney.

COMMENTARY: A forensic expert's usefulness can often extend beyond the forensic discipline.

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378. *In re the Marriage of Ronald F. and Marie Richardson; Ronald J. Richardson, as Executor, etc., Respondent, v. Marie Richardson, Appellant*, Court of Appeal, State of California, Fifth Appellate District, F032260, Super. Ct. No. 154564, Opinion, April 13, 2000. Not to be published in the official record.

Marie claimed that her deceased, divorced husband intended her to have the proceeds of a medical insurance settlement. In support of the claim she presented a letter to decedent's former attorney purportedly signed by decedent. At page 6: "The trial court found, as we do, that Marie forged the letter. We have reviewed the testimony of the handwriting expert and find it credible and unimpeachable."

COMMENTARY: The expert was Marcel B. Matley of San Francisco, a member of National Association of Document Examiners. Not mentioned in the decision is that the principal exemplars used were two checks from a prior case in the Estate of Ronald F. Richardson. Marie had claimed decedent gave them to her and she assisted him in writing his signatures as payor. The trial judge found she had written them herself, relying on Matley's testimony of how impossible her story was of how she had assisted him.

## 2001

379. *Guevara v Mansour*, 2001 Ca. App. Unpub. LEXIS 460 (CA App 2001)

Nancy Cole testified to the authenticity of a deceased woman's signatures and initials on a disputed will. Her testimony was found to be more credible than that of two lay witnesses.

COMMENTARY: A case of routine admissibility that has the added virtue of reiterating California's rule that expert handwriting evidence can be credited above lay testimony, citing *In re Clark's Estate*, 93 Cal. App. 2d 110, 208 P.2d 737 (1949), in which expert testimony prevailed over that of attesting witnesses to prove falsity of a signature.

380. *People v Boyd*, 2001 Cal. App. Unpub. LEXIS 2502 (Cal. App. 2001)

Returning home from work at Macy's, Ms. Gothard was robbed of a bag with two sweaters and the receipt for them. "The morning after Gothard was robbed, a man, later identified as the defendant, returned two cashmere sweaters to Macy's. Sales clerks Rosemary Hart and Nawal Charudhry selected the defendant from a photographic lineup as the [\*7] man who returned the sweaters. They also identified defendant at trial. A handwriting expert opined that the signature used during the return was similar to defendant's handwriting."

COMMENTARY: It does not say whether the robber returned the purchases for cash or a better fit.

381. *People v Protsman*, 88 Cal. App. 4th 509, 105 Cal. Rptr. 2d 819, 2001 Cal. App. LEXIS 279, 2001 Cal. Daily Op. Service 2988, 2001 Daily Journal DAR 3681 (Cal. App. 2001)

At page [\*6]: "A handwriting expert who reviewed two samples of Protsman's handwriting testified it was probable that Protsman had written the letter purportedly from Smith stating she was paying Protsman and Dee the money she owed and had written out two of Smith's checks. The expert testified that Protsman attempted to disguise his handwriting in each of his exemplars."

COMMENTARY: The case report offers an example how California's "general acceptance" rule for admissibility of novel scientific evidence works. A defense medical expert offered a PET scan to demonstrate prior brain trauma. This usage was shown by prosecution medical evidence to lack acceptance in the relevant branch of medicine, so it was properly excluded. Thus, the rule can be applied to an entirely new field or to a novel technique within an otherwise established field or to a new application of a generally acceptable technique.

## 2002

382. *Estate of Laverne Shinkle; Thompson v Lindop, as Acting Public Administrator, etc., et al.*, 97 Cal. App. 4th 990, 119 Cal. Rptr. 2d 42, 2002 Cal. App. LEXIS 3469, 2002 Cal. Daily Op. Service 3418, 2002 Daily Journal DAR 4257 (Cal. App. 2002)

It states that a handwriting expert testified, but no particulars are given.

COMMENTARY: The principle discussion considers when undue influence is presumed and how the presumption is satisfactorily answered.

## 2003

383. *People v Churchfield*, 2003 Cal. App. Unpub. LEXIS 5307 (4 App. Dist.)

Defendant was convicted of drug offences and appealed denial of his motion to suppress evidence. He denied having given voluntary permission to an officer to search his residence. James Black, examiner of questioned documents, testified that the consent search waiver had characteristics supporting defendant's claim. For example, boxes to be checked were checked in different inks on different surfaces. The trial court found Black's testimony to be "troubling," but ruled against defendant. Appeal court accepts "trial court's resolution of conflicting facts, unless we find the facts determined by the court so incredible as to be unworthy of belief... Given the facts presented, it was not outlandish or unworthy of belief that the officers obtained the defendant's consent, as they testified in the trial court."

COMMENTARY: It was a matter of contradictory testimony from opposing parties, except that the only independent and disinterested testimony came from the expert, which apparently was discounted, however troubling the truth was.

## 2004

384. *Hansen v Hansen*, 2004 Cal. App. Unpub. LEXIS 9732 (Cal. App. 2004)

"[\*15] The trial court did not arbitrarily reject the expert's opinion that the signature on the quitclaim deed was not Betty's. The expert's ultimate conclusion was conditional: '*If the exemplar signatures accurately and completely represent the signature of Betty Hansen*, she did not write the signature on the quit claim deed.' (Italics added.) The expert admitted the exemplar signatures he used were several years old, and time and Betty's intervening stroke could have affected her signature. Although Patricia describes Christine's testimony regarding the signing and notarization of the quitclaim deed as contradictory, Christine testified, in no uncertain terms, that Betty signed her own name to the deed. We conclude substantial evidence supported the trial

court's findings, and we therefore affirm the judgment.”

COMMENTARY: One could reasonably argue either way that the expert should have refused to testify absent contemporaneous signatures or that he did well to provide the best assistance to the client that he could in the circumstances. Because he was forthcoming as to the difficulties involved, I believe he did the proper thing.

385. *La Vine v Silva*, 2004 Cal. App. Unpub. LEXIS 5321 (Cal. App. 2004)

“La Vine argues there was insufficient evidence that he signed repair orders numbered 017354, 017404, 017422 and 017458. He cites the testimony of his retained handwriting expert, who opined the signature appearing at the bottom of each repair order was not La Vine’s.

“...The judgment, however, specifically stated that it was unnecessary to determine if the signatures were authentic.... The issue has no bearing on any issue in the case as La Vine paid three of the orders and disputed the fourth only on the basis the work was under warranty.”

COMMENTARY: Then later in the opinion we read how inconsequential an expert can be in a case and how frustrating to the expert’s best work the client can be: “The judgment, however, states that if the authenticity of the signatures were an issue, the trial court would give very little weight to the opinion of La Vine’s handwriting expert. One of the stated reasons is that the expert examined La Vine’s signature only on checks. The trial court opined the expert’s opinion would be entitled to more weight if he had reviewed La Vine’s signature on other documents to ensure La Vine was not more careful when signing checks than at other times. In this regard, the trial court stated, [\*24] ‘It is also notable that Mr. La Vine failed to produce any other document with his signature....’

“This whole discussion, however, is academic. The trial court did not determine if the signatures were authentic because that question was immaterial to the case. In other words, even if the trial court’s statement were wrong, the judgment would not be affected.”

386. *People v Brudvik*, 2004 Cal. App. Unpub. LEXIS 11177 (Cal. App. 2004)

“Sometime after April 28, 1997, authorities, by legal means, intercepted a letter and an envelope sent by defendant, in which defendant had written, ‘I robbed a bank,’ and signed it ‘Dennis.’ A handwriting expert testified that the handwriting on the letter was the same as on the demand note to the bank teller.”

COMMENTARY: Some defendants do not seem to get the message that they are not supposed to confess, especially in writing, without first striking a deal.

387. *People v Mouradian*, 2004 Cal. App. Unpub. LEXIS 11889 (Cal. App. 2004)

A handwriting expert testified on surrebuttal that defendant had not filled out or signed certain DMV documents.

COMMENTARY: A case of routine admissibility.

388. *People v Nawi*, 2004 Cal. App. Unpub. LEXIS 11648 (Cal. App. 2004)

Defendant attempted to counter DNA, fingerprint and handwriting evidence with his own experts and by challenging the reliability of the three disciplines. DNA is given the most extensive discussion, and the discussion of handwriting offers an excellent survey of the

California rule, based on *Frye*, and how it differs from the Federal.

At page [\*61]: “Defendant does not challenge that ruling on appeal, but he argues that the prosecution’s handwriting expert should have been required to conduct her comparisons using original documents, not copies. We reject the argument. First, insofar as defendant complains the expert did not obtain an original exemplar of his handwriting, the complaint is contrary to the law. A self-serving exemplar obtained after arrest is not useable because of the risk of deceit. *People v. Sauer* (1958) 163 Cal. App. 2d 740, 745; *People v. Golembiewski* (1938) 25 Cal. App. 2d 115, 119.) Handwriting comparisons may properly be made with copies. (*People v. Norwoods* (1950) 100 Cal. App. 2d 281, 285.) Defendant’s own handwriting expert so testified. The evidence sufficiently established that the comparison documents were genuine copies, and defendant makes no contrary claim on appeal.”

Later: “[\*62] The prosecution’s expert acknowledged that the use of copies made the comparisons more difficult and precluded an absolute identification. However, the expert found several visible characteristics, such as formation design of the letters, height ratios, and spacing, that enabled her to conclude with a high degree of probability that the signature on the safe deposit entry ticket was by the same person who signed the specimen documents. She found no dissimilarities between the signatures. The jury heard the limitations faced by the expert and was entitled to decide what weight should be given to her conclusions. The limitations did not preclude admissibility of the expert’s testimony.”

Footnote 23 reads in part: “The [defense] expert opined that because only copies were available—not the originals—and because the copies were poor, no conclusion could be reached on whether the same person signed all the documents. However, the expert found no significant dissimilarities between the questioned signatures and the known signatures.”

The Court then considers the contention that reliability of handwriting expertise had to be shown before it was admitted. The Court notes that it has long been admissible in California and that, while some Federal district courts rejected or restricted it, every Federal circuit court to consider the question ruled it admissible.

COMMENTARY: Although this is an unpublished case report and may not be used as a legal precedent, surely its information and logic can well be used. I would suspect it is unpublished because in California there is ample legal precedent on every issue discussed. The discussion about use of copies is very instructive. Some handwriting experts refuse to assist clients unless there are originals or at least high quality copies. However, fact-finders often must make decisions based on the poorest of copies, and in such situations they need expert assistance even more to extract whatever evidence there is and to know where caution is required. Only a very good expert can offer proper assistance in very difficult conditions.

389. *In re the Marriage of Natalie and Vincent Reicheun, Sr. Armstrong v Reicheun*, 2004 Cal. App. Unpub. LEXIS 11566 (2004 2 Dist Ct App CA)

James A. Blanco testified that the wife’s purported signature on a deed was traced from an earlier trust agreement. Both spouses had died, and Natalie’s estate was awarded sole ownership of the property in question.

COMMENTARY: A case of routine admissibility.

390. *People v Wells*, 12 Cal.Rptr.3d 762, 118 Cal.App.4th 179 (CA St. App. 1 Dist. 2004)

Conviction for sex with two minors was affirmed. The entire statement regarding expert testimony is quoted, with “J” being one of the female victims:

“At trial, Jerry Wells’ wife testified she found a torn-up note in J.’s notebook. The 767\*767 note, which was taped together and admitted into evidence, appeared to be a handwritten colloquy between two people. One reported she had sex with her first boyfriend, Deshon, when she was 10 years old. The note also said, ‘I might do it again next week,’ which was followed by the remark, ‘Do it.’ J. denied writing any part of the note, claiming it had been written by her friend Paige. A document examiner testified for the defense that, in his expert opinion, the note contained handwriting by two individuals but statements describing intercourse with the boyfriend were written by J. A second document examiner testifying for the defense concluded the entire note was written by J.”

COMMENTARY: A case of routine admissibility.

391. *Sina v McLaughlin*, 2004 Cal. App. Unpub. LEXIS 751 (Cal. App. 2004)

“There is no doubt that the trial judge received expert testimony from an independent handwriting expert after the parties had rested without affording either party an opportunity to cross-examine the expert. That was highly irregular, and clearly deprived the parties -- McLaughlin in particular -- of the opportunity to demonstrate whether there were any flaws in the expert’s analysis. (See *People v. Archerd* (1970) 3 Cal.3d 615, 638, 91 Cal. Rptr. 397 [‘the interviewing of potential witnesses [\*8] anywhere but on the witness stand should be avoided’].) Under *Evidence Code section 732* [‘expert appointed by the court . . . may be called and examined . . . by any party to the action’], the parties had a right to call and cross-examine the expert witness appointed by the court.

“We cannot say the error was waived. True, McLaughlin’s posttrial brief bravely declared that ‘the defense has no objection and is confident that the independent expert’s findings will mirror Mr. Blackford’s findings and further support Mr. Blackford’s testimony.’ But this declaration was an agreement to the appointment of the expert; counsel still had a legitimate right to expect the court to reopen to allow parties examination of the witness under *Evidence Code section 732*. This statement does not constitute a waiver of rights under *Evidence Code section 732*.

“Moreover, the absence of cross-examination may have led to a serious miscarriage of justice. It appears that the judge may have *mixed up* the appropriate handwriting exemplars, as revealed by certain language in the statement of decision.”

COMMENTARY: Paul Blackford was the handwriting expert whom McLaughlin called and whose credibility the judge rejected, apparently a precipitous and unfair rejection.

392. *Westside Investments, Inc., v Rabizadeh*, 2004 Cal. App. Unpub. LEXIS 4540 (Cal. App. 2004)

At page [\*6]: “At trial, defendant denied signing the depositor agreement. The trial court found, however, that he did sign the agreement. Kohanchi testified that defendant signed it and plaintiff’s handwriting expert testified that the signatures on the depositor agreement were defendant’s.”

COMMENTARY: A case of routine admissibility.

393. *Estrada, et al., v Celestine, et al.*, 2005 Cal App. Unpub. LEXIS 4863 (CA 2 App Div 2005)

At [\*8]: “The notary testified that Jose signed only a promissory note on April 13. He did not sign a deed of trust; if he had, she would have noted that fact in her records. A document examiner testified that Jose Estrada’s signatures on the original recorded deed of trust and promissory note were obviously photocopied and that the crimped notary’s seal did not appear to be genuine.”

COMMENTARY: It seems to have been a multiple cut-and-paste job.

394. *Harris v Fremont Investment and Loan, et al.*, 2005 Cal. App. Unpub. LEXIS 5322 (CA App 3 Div 2005)

As plaintiff, Harris lost and appealed, the trial court’s judgment being upheld. His handwriting expert at trial was James A. Blanco. At [\*11]: “Harris’s expert, Blanco, testified Dr. Love’s signature on several documents appeared forged. However, Blanco also testified signatures can change over time, particularly with age and ill health. The genuine signatures Blanco used to authenticate Dr. Love’s signature were 12 and 30 years old. Newer signatures would have been preferable. Blanco acknowledged that, assuming it was genuine, a November 2000 signature reflected significant deterioration from the last signature known to be genuine, which was from 1989.”

The trial court and Court of Appeals found Blanco’s testimony to support defendants/appellees position: “The court found the evidence shows there was not such an apparent or noticeable discrepancy that a reasonable person examining the genuine signatures and the allegedly forged signatures would be caused to suspect that Dr. Love did not sign the Love grant deed, the Fremont deed, or other documents submitted [\*22] to Fremont. The court further found no evidence anyone connected with Fremont ever actually compared the signatures cited by Harris.

“Our review of the record reveals no evidence any employee of Fremont or Chicago Title ever compared the signature on the 1989 deed with the disputed signature on the Fremont deed.

“Moreover, Harris’s own handwriting expert testified as to the difficulties in assessing authenticity. Blanco testified that a signature can change over 10 years. Medical problems contribute to handwriting deterioration. Photocopies obscure detail and make authentication more problematic. Blanco testified that in assessing the authenticity of Dr. Love’s signature on a document, he could not make an accurate determination absent a microscope.”

COMMENTARY: Affiliated with AAFS and ABFDE at the time, Mr. Blanco’s methods supported a finding of no fraud rather than a finding of forgery as his client asserted and he opined. It is an object lesson that, if an expert witness is to go against recognized standards such as having exemplars closer in date than 10 years, he must prove compelling reasons for doing so. The case report gives no indication that several violations of standards were supported by valid reasons in this case. The cross-examiner did a masterful job of exposing all the weaknesses in the expert opinion, while apparently plaintiff attorney failed to rehabilitate the witness. At trial, expert witnesses are at the mercy of their client as to what to take up on redirect, and after trial they are at the mercy of the court as to what is important to put into the written decision.

## 2006

395. *People v Prescod*, 2006 Cal. App. Unpub. LEXIS 1183 (CA App 2006)

At [\*5] David Oleksow obtained handwriting exemplars from defendant but believed them disguised “because the samples showed the writing to be very controlled and lacked the fluency normally seen in writing.” Sandra Homewood was forensic document examiner for the prosecution at trial. A notary public testified that the questioned deed had not been notarized by her. Homewood testified Prescod had written various signatures on the deed and other documents but as to grantor’s signature “the signature in question was made up of scribbles and scratches.” The victim was defendant’s mother. Conviction and sentence were affirmed.

COMMENTARY: One would hope that defendant’s normal course of business and social life writings were examined before the opinion of disguise was given, because many people normally write with notable control and lack of fluency. It is only those who have graphic maturity and mastery of the skill who write fluently and at a fast tempo.

## 2007

396. *In re Marriage of Sarchet; Sarchet v Sarchet*; A114901. (CA 1st App. Dist. 2007)

Wensen had testified that her mother had signed three documents relating to the purchase of a house. “However, Nancy Cole, a forensic document examiner, testified that the signatures of Wensen’s mother on all three documents had been simulated by Wensen. Wensen subsequently admitted that she had signed her mother’s signature, but testified she had her mother’s permission to do so.”

Cole testified to another issue: “The trial court rejected Wensen’s claim that she had ‘minimal income,’ and concluded instead that the evidence supported Mark’s contention that Wensen had access to significant assets in a Bank of America checking account held in the name of Wensen’s mother. In this regard, the court credited testimony by Nancy Cole, a forensic document examiner, that Wensen had written all of the checks against this account by simulating (or forging) her mother’s name.”

COMMENTARY: At the beginning the case report states: “Wensen and Mark married in 1991, and separated in 1998. A judgment of dissolution was entered on December 14, 1999. The superior court reserved jurisdiction to resolve all other issues between the parties which has proven to be a very time consuming process.” It then goes on to describe the woes of the divorce and its aftermath such as to inspire the rest of us to avoid divorce at all costs, because “all costs” might be the smallest price we pay otherwise.

## 2008

397. *Castagna v City of Seal Beach*, Cal: Court of Appeal, 4th Appellate Dist., 3rd Div. G039084. (2008)

Plaintiff, a police officer with City of Seal Beach, had testified that he witnessed someone sign a document. He was dismissed on a finding that the signature was a forgery and thus he had committed perjury. He sued. Four document examiners testified at trial. James Black and Connie



Brinker testified the signature was false, supporting a finding of forgery. Glen Owens and Michael Gryzik testified it could not be determine whether the signature was genuine or false. The trial court gave credence to the latter two and thus ruled in favor of plaintiff, a ruling upheld on appeal with costs awarded to plaintiff.

The case report reads like a report on a debate between handwriting experts as the reasons pro and con are related while the retorts by Owens and Gryzik end the debate. However, “qualifications” seem to have been the deciding factor in the trial court’s preference for the opinion of Owens and Gryzik. Discussed at modest length is the testimony of these two about the qualifications of the former two and of their mutual admiration for each other’s status as experts. On the contrary, Brinker’s background in graphology is given most shrift in her regard while Black’s alleged lack of formal training is emphasized in contrast to the other two examiners.

COMMENTARY: The case report makes interesting reading (and for testifying experts maybe a must reading) for two factors. First, it gives an excellent example of judicial reasoning. Whether or not one approves of this reasoning is almost incidental to the fact that one must appeal to and satisfy it if one is to be an expert witness. Second, it ranges over many elements that a handwriting expert should consider in such examinations. No matter how solid your evidence in support of your opinion, fail to consider one factor and it can become either cause or excuse to discount your testimony.

Owens and Gryzik gave testimony denigrating the qualifications of Black and Brinker, who did not return the disfavor. The former two had the advantage of Brinker who, being a member of NADE, was under the prohibition of NADE’s Code of Ethics not to engage in such. It is at least contrary to Federal case law, though I do not as of now know of any relevant California case law. In any case, I consider it to be, if not unethical for all expert witnesses, at least in very bad taste. Further, Owens and Gryzik were merely bolstering each other’s status, first by being haughty towards Black and Brinker and second by being mutually self-admiring. They also agreed on the peculiar persuasion which is pervasive among large numbers of handwriting experts, that knowledge of handwriting examination requires ignorance of handwriting analysis. Peculiar logic, yes, but effective marketing.

398. *Harman v California Federal Bank*, B183480. (CA Ct. App. 2 Dist. 2008)

Two document examiners testified, and the following is all that is said of the two.

“Jess Dines, a document examiner, testified it was highly probable the 90 questioned documents he examined were not written by Harman based on five exemplars of Harman’s signature he was provided.

“Frank Hicks, a document examiner, was skeptical that an opinion could be rendered based on only five exemplars as Harman’s expert had. Hicks used 49 examples. The great majority of the signatures Hicks examined agreed to some extent with the known signature. If the person writing the signature was on medication, the signature might appear to be a forgery.

“Harman contends she presented independent evidence of forgery, consisting of evidence that checks were paid to Brad Cates and the memorandum dated July 6, 2000, that acknowledged the existence of forgeries. Harman notes the bank reimbursed her for one of the forgeries in the amount of \$729.87, and the bank’s document examiner testified that 63 percent of the checks he reviewed either probably were written by another person or there was not enough information for

a definite conclusion. Also, of all the withdrawal slips he reviewed, he could not offer a definite conclusion as to the author as to 52 percent of them.”

COMMENTARY: I believe it is a fair inference to say Dines was Harman’s document examiner and Hicks the bank’s. I would share Hicks’ skepticism about the “highly probable” opinion Dines developed with only 5 exemplars. A handwriting expert should be wary when one’s own client cannot come up with more than 5 exemplars by the client while the opposing party comes up with 49. Since the jury ruled on all issues save one in favor of the bank (that apparently did not benefit Harman financially), Hicks seemed to have given better testimony for Harman than Dines himself had.

399. *Estate of Willis W. Lazelle; Keffer v Hacker, et al.*, F053210 (CA 5 App. Dist. 2008)

Document examiner Manuel Gonzales testified that decedent’s signature on the will was probably false. It was admitted to probate.

COMMENTARY: Given what I have heard of Gonzales’s reputation and the observations he relied on, my guess would be another forgery prevailed.

400. *Estate of Yvonne Paul, Deceased. Henry Stevens, Petitioner and Appellant, v Yolanda Paul, Objector and Respondent*. A120879. Court of Appeals of California, First Appellate District, Division Two. November 7, 2008.

Patricia Fisher testified to qualified opinion that decedent had not signed deed of her house to Yolanda, her daughter. Trial court found testimony of three daughters to the opposite persuasive and that exemplars Fisher used had not been sufficiently proven genuine. John Owen was not permitted to testify since the original deed had not been made available to Fisher though Owen used it.

COMMENTARY: One cannot infer that it was Owen’s doings that Fisher had not seen the original. However, his presumed opinion prevailed. There are, it seems, several with names similar to the document examiner, such as a John Owens who wrote a book *Personality Mapping*.... One must be most cautious in researching on the Internet, since so many folk have similar names and engage in similar activities, while so much information is incorrect anyway.

401. *People v Howard*, E042513. (CA Ct. App. 4 Dist. 2008)

Defendant produced two letters he claimed came from one of the women he was accused of beating: “A document examiner testified that in her opinion, the handwriting in the two letters Arnett had purportedly written to defendant while defendant was in custody was not consistent with exemplars of Arnett’s handwriting. A handwriting exemplar taken from defendant in court appeared to be distorted and not written naturally; defendant had taken about 35 minutes to write two pages. The document examiner was not able to reach a conclusion as to whether the letters were consistent with defendant’s exemplar. However, the handwriting on the letters was consistent with documents in defendant’s cell signed with defendant’s name, and the document examiner formed the opinion that the letters had been written by the same person who had written the documents found in defendant’s cell.”

Conviction on 13 counts “along with true findings on associated enhancements” was affirmed.

COMMENTARY: A case of routine admissibility.

402. *People v Lewis*, D051661. (CA 4 App. Dist. 2008)

In a trial for grand theft by an employee, “The defense presented several witnesses. A forensic document examiner testified she could not identify or eliminate Lewis as the person who wrote 12 refund slips.” Conviction was affirmed.

COMMENTARY: The weakness of the expert evidence offered might suggest defense counsel was hard put to offer an effective and persuasive defense.

403. *People v Morgon*, B204856. (CA 2 App. Dist. 2008)

In a prosecution for check forgery, “Russell Bradford, an expert document examiner, testified for the defense that in his opinion, none of the checks were endorsed by defendant, but check Nos. 8125, 8127, and 8129 were endorsed by Galaz. Bradford could not determine who signed several of the checks as payor. He had defendant sign his own name and Galaz’s name as an exemplar, but did not have Galaz provide any exemplars.”

COMMENTARY: California has adopted the *post litem motam* rule for which the U.S. landmark case is *Hickory v U.S.*, 151 US 303, 14 Sup Ct 334, 38 L.Ed. 170 (1894). Since defendant was Bradford’s client who was helping to prove his own assertion, the testimony would seem to be legally inadmissible. Handwriting experts often violate this rule with impunity. See my paper, “The making of one’s own exemplars; the *post litem motam* rule as illustrated by California,” 21 *Journal of the National Association of Document Examiners*, 1-5 (Spring 1998).

## 2009

404. *K.C. Multimedia, Inc., v Bank of America Technology & Operations, Inc., et al.*, 171 Cal. App. 4th 939, 90 Cal. Rptr. 3d 247, 2009 Cal. App. LEXIS 276 (6 App. Dist. 2009)

At [\*6]: “Among the issues that appellant pressed at trial was its claim that Chun’s signature on the 2000 contract had been forged. Both sides presented handwriting experts (forensic document examiners) to testify about this claim.”

COMMENTARY: This is the entire discussion of the expert testimony.

405. *People v Baro*, F054461. (CA 5th App. Dist. 2009)

“James Blanco, a forensic handwriting expert, compared Henderson’s handwriting on the Better Business Bureau complaint to the single word ‘FRAUD’ written on the other document. Blanco concluded that it was highly probable or virtually certain that the person who wrote the full page of writing was the person who wrote the word ‘FRAUD.’

“On cross-examination, Blanco said he did not know what the word ‘FRAUD’ referred to or when it was written. He also admitted it was very common for handwriting experts to disagree.”

COMMENTARY: It would be instructive to know how the opinion was arrived at.

406. *People v Hamlin*, 170 Cal. App. 4th 1412, 89 Cal. Rptr. 3d 402, 2009 Cal. App. LEXIS 159; modified and rehearing denied, 2009 Cal. App. LEXIS 300 (3 Dist. Cal. App. 2009); certiorari denied, California Supreme Court...

S, wife and alleged victim of torture by her husband the defendant, had handwritten two long letters. The first to defendant stated that S’s father and his friend, not her husband, had sexually

molested and maltreated her. The second to a law enforcement detective said the contrary. S testified that defendant forced her to write the first letter and she freely wrote the second. If the jurors believed the first letter, defendant would be acquitted; if the second, he would be convicted. They convicted.

Defendant had proffered expert handwriting testimony by Matley that the first letter was written freely and spontaneously, showing no stress and thus no duress, while the second had been written under severe stress consistent with duress. The prosecution brought an *in limine* motion to block the expert testimony, and the motion was granted because the testimony would not have assisted the jury in any material way, would be an undue consumption of time, and would distract the jury with irrelevant issues. Further, though the witness “had some expertise” in the matter, he had been qualified only once as an expert in stress and handwriting and testified only three other times on the issue.

There was no abuse of discretion in not allowing the testimony.

COMMENTARY: Since I was the expert witness, I offer comments based on personal experience, a certified transcript of the testimony at trial and the published decision by the Court of Appeals. I hope this may assist you in a similar situation. The matter is treated extensively in the case report, but critically important information is left out. The evening before the hearing defendant, a licensed attorney, and I spent hours reviewing testimony for the jury. The prosecutor sprung the motion at start of trial the next morning, and defendant was not given a moment to instruct me on the altered situation. I testified blind as to the issue of the motion.

Not mentioned in the case report is the annotated bibliography that was a significant part of my testimony. It included Albert S. Osborn’s teaching of how anxiety, stress from fear of discovery, changes the forger’s handwriting causing similarities to certain indicia of forgery. Thus, I could say that handwriting experts routinely consider stress in handwriting. The judge in his ruling and the Court of Appeals in its somehow skipped over this fact. The bibliography ended with contemporary research reported in the med/psych literature that confirmed what was reported in the literature of document examination.

The case report mentions testimony that the fact, but not the cause, of stress can be determined from the handwriting. Though this is true, it was illogically used to justify barring the testimony. Correct logic is this: The letter written to defendant had no indicators of stress, so it definitely was not written under duress or by dictation. The second letter was far more stressed than S’s writings made in the ordinary course of social life, so it could be reasonably explained by duress. All this would have addressed the jury fact at issue, contradicted the prosecution’s theory, and impeached S’s testimony.

The case report further mischaracterizes the nature of the writings produced in the ordinary course of social life. These clearly established the ordinary degree of stress in S’s writing, giving a benchmark for measuring an extraordinary degree of stress in the second letter; and they established an extraordinary freedom from stress in the first letter. All this provided Hamlin’s sole defense against some evidence that went directly to the charges against him. Yet the court said the testimony was irrelevant.

The *in limine* hearing, during which time the jury was isolated in the jury room, ended with a ruling that jury testimony would be very time consuming. The hearing took two to three times as long as jury testimony would have.

In this collection of case law, commentaries assume that courts represent things correctly. Is there an expert witness or a trial attorney who would defend this assumption as a safe, unfailing guide to the truth? However, we must treat case reports that way in order to understand judicial logic, and at times illogic. After all, these rulings rule our lives as expert witnesses and litigants. It behooves us to be simple as doves when dealing with judges but shrewd as serpents when preparing to deal with them. In the *Hamlin* case the serpents unfortunately were all on the side of the prosecutor. We had not considered the possibility of the ambush of an unnoticed *in limine* motion that won approval from the trial judge. The judge and prosecutor had long since been given full notice of the proposed testimony along with a written report.

I hope this story will help you master the lessons about litigious fire without being pedagogically or combat burned.

407. *People v Lopez*, F053672. (CA 5 App. Dist. 2009)

Lindsay Police Department detained defendant during an investigation in late 1990. As part of the investigation some papers were sent to questioned document examiner James Prouty for examination. Defendant was released. In 2002 the police began investigating cold murder cases, and defendant was arrested for the murder of his wife. In the course of the investigation James Blanco was retained to examine documents and identified defendant as writer of some of the incriminating documents. At trial the defense called Prouty to testify that he could make no such identification. Frank Hicks, another questioned document examiner, could only say defendant probably filled out a motel registration card. The murder conviction was affirmed.

COMMENTARY: A case of routine admissibility.

408. *People v Ontiveros, et al.*, 2009 Cal. App. Unpub. LEXIS 6083 (Cal. App. 2009)

Defendants' conviction involving "a real estate pyramid scheme" was affirmed. A handwriting expert testified to a forged signature on a deed.

COMMENTARY: A case of routine admissibility.

409. *People v Tedeschi*, G040661. (CA Ct. App. 4 App. Dist. 2009)

"Tedeschi offered the testimony of Sheila Lowe, a handwriting expert. Lowe opined N.H. wrote the letters Tedeschi received while he was in jail." N.H. was one of the women against whom Tedeschi was convicted of committing sexual offences. Tedeschi testified he did not know why N.H. sent him the love letters.

COMMENTARY: Ms. Lowe is a member of NADE.

2010

410. *Brenlar Investments, Inc., et al., v Lynch*, A121044 (E) (Ct App CA 2010)

David Moore testified for plaintiff that certain signatures and initials were false and that some were "more likely than not" written by Lynch.

COMMENTARY: A case of routine admissibility.

411. *Jones v Jones*, No. G042549. (Court of Appeal, 4th Appellate Dist., 3rd Div., 2010)

The issue was whether defendant, decedent's wife, was removed as a trustee on the family trust. Plaintiff, decedent's son, retained James A. Black as document examiner who concluded the signature in question was genuine. He had examined original documents and a number of exemplars. Defendant retained Jess E. Dines who concluded the opposite. However, Dines did not examine originals and used far fewer exemplars, admitting in testimony that Black's method was preferable. The judge gave full credence to Black's opinion.

COMMENTARY: Dines is the author of what may be the worst book in forensic document examination, an opinion he knows I hold and have made public.

412. *In re Estate of Moon*, No. C061192. (CA Ct. App. 3 Dist. 2010)

"David Moore, a forensic document examiner, examined the 2004 will. According to Moore, the signatures on page one of the 2004 will were not written by the person who signed the second page." The trial court invalidated the 2004 will for other reasons and admitted an earlier will to probate.

COMMENTARY: A case of routine admissibility.

413. *Neman v Federal Deposit Insurance Corporation*, No. B212246. (CA 2 App. Dist. 2010)

James Blanco testified about a signature.

COMMENTARY: A case of routine admissibility.

414. *People v Estrada*, No. G041925. (CA 4 App. Dist. 2010)

"Cesena [defense counsel] put on a reasonable doubt defense. Frank Hicks, a forensic document examiner, testified '[defendant] probably did not' make the writings on the pay/owe sheets in the notebook found in defendant's bedroom."

COMMENTARY: The rest of the case report is a more complex discussion of a claim of ineffective assistance of counsel which did not persuade the court of appeal. "Pay/owe sheets" are coded records of which customers already paid for purchases of illegal drugs and of which ones had received the drugs but not yet paid.

415. *People v Green*, No. F059409. (CA Ct. App. 5 Dist. 2010)

"A Department of Justice questioned document examiner opined there were 'indications' that appellant had signed Indio's name to the check and the loan request form. Detective Hale testified that handwriting in a notebook recovered from appellant's home 'resembled the signature of Barbara Indio on the [loan] documents.'"

COMMENTARY: Such expert testimony could hardly convict anyone, so there was other evidence among which was that the victim of check and loan fraud had testified none of the signatures in question were hers nor had she ever seen defendant until the trial.

416. *People v Nash*, D053238. (CA 4 App. Dist. 2010)

Document examiner David Oleksow "was reasonably certain" defendant wrote incriminating notes. Later it is said that he "testified there were indications the handwriting belonged to Nash."

COMMENTARY: This case points up the virtue of a standard terminology, since one can be

reasonably certain of any degree of probability being correct, while “indications” does not mean an identification in ASTM terminology but only basis for a reasonable suspicion. On the other hand, ASTM terminology for expressions of opinions by document examiners provides no standard and objective guideline for selecting one term over another.

417. *In re Estate of Wisner; Osband, Petitioner and Appellant, v Raypholtz, Objector and Respondent*. No. F058073. (CA 5 App. Dist. 2010)

Forensic document examiner, James Tarver, testified to whether signatures of decedent were assisted or guided or false.

COMMENTARY: A case of routine admissibility for a less than routine issue that handwriting experts face not too often. As far as I can recall, I testified only twice on the issue of assisted signatures, and those regarding the same decedent. His divorced wife first attempted to keep proceeds from two large but forged checks, claiming they were gifts. She asserted that she had assisted the signing after I had testified in deposition that the signatures were false. Her description of how the assisting took place would have made the final result physically impossible. On the second trial she sought proceeds of insurance payments as wife at the time. The two check signatures, that were found by the judge in the first case to have been written entirely by her, were used as exemplars to show she also signed decedent’s name to the letter supporting her claim in the second case. Additionally, exemplars of her writing his name in the ordinary course of things also showed her peculiarities in writing his name, however much she had developed pictorial similarities.

An excellent research project on assisted, guided and inert-hand signatures is to be found in *Journal of Questioned Document Examination*, Vol. 8, Special Edition, 2000.

## 2011

418. *People v Porter*, No. F057076. Court of Appeals of California, Fifth District. Filed April 5, 2011.

Patricia Fisher testified for defendant that elderly murder victim had signed four exhibits. Defendant’s multiple convictions, including murder of elderly man, were affirmed.

COMMENTARY: A case of routine admissibility.

419. *In re Estate of Richards; Duffer v Richards, et al.*, No. B226261. (CA Ct. App. 2 Dist. 2011)

Howard C. Rile, Jr., was document expert for petitioner, Duffer. The case report indicates that he did a thorough examination of all aspects of the two wills in question. Regarding the questioned authenticity of decedent’s signatures, Riles’ opinion is stated thus:

“His evaluation of the signature was based on standards developed by the American Society of Testing Material with a nine-point scale for evaluating signatures. He testified at one end of the scale, a ‘one’ would be a positive opinion that the person indeed executed the questioned document. On the other end, an opinion of ‘nine’ is a definitive conclusion the person did not execute the questioned document. In between, the scale offers an option of ‘five’ or a conclusion the examiner could not determine the questioned document contained a particular person’s

signature. Mr. Rile's opinion was that it was as likely as not that decedent or someone else executed the first document."

Lynn Variano was document examiner for contestants, but since Duffer did not carry his burden of proof, she did not have to testify.

COMMENTARY: I believe there is a good chance the court did not fully understand Riles' opinion. For example, if his opinion were "that it was as likely that decedent or someone else executed the first document," he would only have concluded to what the question posed to him was. Given the thoroughness with which it is reported he examined the documents, it is reasonable to believe his statement of opinion would have been equally thorough. Additionally, he would not have explained the ASTM terminology as a 1 to 9 numerical scale which it seems was the court's take on it. This, then, is another opportunity to repeat that it may not always be wise to take case reports on face value.

Ms. Variano is a member of AFDE.

## 2012

420. *Beverly Hills Triangle, LLC, et al., v AYN Pharmacy Corp., et al.*, No. B230188. (Ct. App. CA 2 Dist. 2012)

"Both sides offered testimony from forensic document examiners. Respondents' [Beverly Hills Triangle] expert, Barbara Torres, compared the signature on the August 15 letter with other Delijani signature exemplars, and conducted additional tests. Torres opined 'that the person who produced the exemplar documents may not be the same person who produced the questioned signature.' [2] Appellants' [AYN Pharmacy] opposing expert, Frank Hicks, testified that he thought Torres had done an 'excellent job' on the scientific portion of her analysis, but he disagreed with her conclusion. Hicks opined that the 'Delijani signature on the questioned document . . . was probably prepared by the writer of the known signatures that were submitted . . . as genuine signatures of Mr. Delijani.'

"The parties submitted a special verdict to the jury. The first question asked the jury to decide whether the signature on the August 15 letter was authentic. If the jury concluded it was not, they were directed to answer no further questions. The jury concluded the signature was not authentic."

Footnote 2 reads: "[2] In addition to conducting a forensic analysis of the signature on the August 15 letter, Torres also noted other aspects of the letter that 'stood out.' One such factor was inconsistent capitalization of words such as 'lessor,' and grammatical errors."

It was not error to deny the *in limine* motion to exclude testimony by Torres, the motion not being related to her competence but based on various legal challenges.

COMMENTARY: It is always commendable for an expert witness to acknowledge competent work by an opposing expert, though I suspect that trial counsel who retained the former expert would generally prefer the acknowledgment be not made at trial.

421. *In re Castro, People v Castro*, Nos. H036045, H034813. (CA App. 6 Dist. 2012)

It was ineffective assistance of counsel not to consult a handwriting expert on whether defendant had written a certain letter. The prosecution used to great effect the letter which



defendant had denied writing. In an earlier case, the same defendant was acquitted when a handwriting expert had testified that he had not written the same letter.

COMMENTARY: The Court of Appeals makes an explicit point that defense counsel should at least have consulted a handwriting expert. Management at the legal assistance agency had denied funds for an expert, which makes one wonder whether the agency's budget simply had insufficient funds to do its job.

422. *In re Marriage of Falcone & Fyke*, 203 Cal. App. 4th 964, 138 Cal. Rptr. 3d 44 (CA 6th App. Dist. 2012)

A document examiner testified that, using a false name, Kathey Fyke had signed proofs of service that were required to be signed by one not a party to the action.

COMMENTARY: I was waiting to testify on the same issue in a similar case, but the judge threw the complaint out due to plaintiff's penchant for such violations of the rules.

423. *In re Estate of Stanley A. Griswold; Seiw Mee Griswold v Frank Griswold*, No. D058713. (CA 4 App. Dist. 2012)

Seiw Mee, age 41 and referred to as Sharon in the case report, visited here on a six-month visa, met Stanley, age 80, and they were married apparently within a month. That was 2000. In 2002 Stanley began divorce proceedings and signed an amendment to the family trust to reiterate his estate went to his sons and to add that he had made other provisions for Sharon. He died in 2006, and Sharon sought to invalidate the amendment on grounds of forgery so that she could share in the inheritance as wife. Sharon called Jess Dines who said it was highly probable that the amendment signature was false, while Frank called Sandra Homewood, a handwriting expert, who said the signature was genuine and that there was no indication of non-genuineness.

COMMENTARY: I will quote a segment from the case report and intersperse my own comments.

"As discussed above, the trial court concluded this case basically came down to a battle of the experts (i.e., Dines and Homewood). The court stated: 'The question really is, which expert was more credible on the witness stand.' The court found Homewood used more contemporaneous standards (i.e., comparison signatures) in her analysis. It also found Homewood's training, education and experience was credible. It was not persuaded Dines had the proper training for a questioned document examiner."

Based on Dines' dreadful book, *Document Examiner Textbook*, he should be disqualified or at least discountenanced whenever he appears to testify. He knows my estimate of his book, since he threatened to sue me unless I withdrew my review when it first appeared, which I refused to do and invited him to proceed and sue me. I stated I would be co-counsel with my attorney solely that I might cross-examine him at trial. I have no idea where he might have learned anything that supports his claim to be a document examiner, not having ever seen his CV that I recall. And I shudder at seeing it.

"Regarding the effect of Stanley's health at the time of the Amendment, the court stated:

"[A]t that time [Stanley] had been released from the hospital, and so the court logically would assume that he was in a weakened state, and given some time to regain his health, the strength of his signature would have improved along with his health. This episodic nature of his

health I think was a factor that Mr. Dine[s] discounted unduly, so I think that an individual, as he becomes stronger, and as Miss Homewood testified, becomes more forceful in [his] signature.”

In his book cited above, Dines discusses how health can affect handwriting, most inadequately and unreliably as is his wont in the book. To show that the poorest text can have a virtue, he cites my text, *Health and Handwriting*, though he gives no indication of having been mentally enriched by its quite substantive teachings. Related to the next quote from the case report, his text also mentions how blindness can affect handwriting. It seems on both issues that he might have forgotten the little he might have known back when he published his book.

“The court found illogical Dines’s testimony that it did not matter whether Stanley was wearing glasses when he signed documents. It also found incredible Dines’ testimony that it was not important what position the writer (i.e., Stanley) was in at the time of signing a document. The court found the signature on a December 7, 2002, correction deed, acknowledged by a notary public, was, in fact, Stanley’s signature and that signature was ‘markedly similar to’ the signature on the Amendment. The court concluded: ‘I’m satisfied that in this case [Stanley] did, in fact, execute the [A]mendment . . . .’”

In his book on page 136 Dines says: “*Body Position*. This may result in significant change in a handwriting.” Per usual, Dines offers no instruction how any given position might do so. As I have always, I recommend you expend neither funds nor reading time on the book unless you need to impeach the author. Certainly do not rely on it in any way as a guide or an authority. As stated previously, Mr. Dines knows these are my views since he wrote to me about them, and I retain the original file in the matter.

424. *People v Hawkins*, No. B235415. (CA App. 2012)

“At the preliminary hearing, the magistrate heard defendant’s motion to suppress evidence. During the hearing, Deputy Macias testified that defendant consented, both orally and in writing, to the search that culminated in the seizure of evidence.

“After defendant’s handwriting expert opined that the signature on the written consent form did not match the exemplars of defendant’s handwriting, the prosecutor called Los Angeles County Sheriff’s Department Detective Adam Kirste to testify. The following exchange occurred during Detective Kirste’s testimony regarding the opinion of Melvin Cavanaugh, a Los Angeles County Sheriff’s Department Questioned Document Examiner: ‘[Prosecutor:] Okay. And in speaking with Mr. Cavanaugh, did he form an opinion, having looked at all of those signatures, as to whether they were all completed by the same person? [Detective Kirste:] Yes, he formed an opinion. [Prosecutor:] And what was his opinion? [Defendant’s counsel:] Objection, Your Honor, hearsay. [Trial Court:] It’s prop. 115.[9] So overruled on that basis. [Defendant’s counsel:] But this goes to my 1538.5 motion. [Trial court:] I know. It’s a prelim. Prop. 115 applies even to a motion to suppress. You filed it now, so it comes in.’”

COMMENTARY: My best understanding is that in California a preliminary hearing in a criminal procedure is one way to determine whether or not there is probable cause to hold defendant to answer the criminal charges. Proposition 115, passed by the voters as a ballot measure, permitted hearsay evidence in preliminary hearings in lieu of calling certain witnesses to testify in person. The provision does not apply to actual trial, only to the preliminary hearing.

425. *People v Thomas*, No. F056337. (CA App. 2012)

“Initially, the trial court agreed with the prosecutor that the poem at issue was relevant as circumstantial evidence of drug trafficking. The court, however, found its admission would be unduly prejudicial under Evidence Code section 352, unless the handwriting could be authenticated as appellant’s handwriting. Subsequently, the prosecution presented the testimony of a handwriting expert who opined that the writing in the poem was by the same person whose handwriting appeared on two forms the expert compared with the poem. Two county employees testified that appellant handed them these forms and that the handwriting on the forms was similar to other forms appellant had handed to them in the past. The court then allowed the prosecution to admit the poem and question Officer Blehm about its meaning and significance.”

COMMENTARY: The officer testified that drug dealers often write poems to brag about their accomplishments. Both experts and their evidence were properly admitted.

### *3. California Supreme Court.*

#### 1993

426. *People v Neely*, 6 Cal. 4th 877, 864 P.2d 460, 26 Cal.Rptr.2d 189, 1993 Cal. LEXIS 6369, 93 Cal. Daily Op. Service 9616, 93 Daily Journal DAR 16468 (CA 1993)

Neely’s wife testified that the writing, which the prosecutor’s handwriting expert testified was Neely’s, was similar to her husband’s.

COMMENTARY: A case of routine admissibility.

#### 1995

427. *People v Tai*, 37 Cal. App. 4th 990, 44 Cal. Rptr.2d 253 (1 Dist 1995)

In a credit card case, the Fifth Amendment does not protect against compelling of handwriting exemplars, and the expert may testify as to disguise of same, which is evidence of consciousness of guilt.

COMMENTARY: A case of routine admissibility.

#### 1996

428. *People v Jones*, 13 Ca. 4th 535, 917 P.2d 1165, 54 Cal. Rptr. 2d 42, 1996 Cal. LEXIS 3255, 96 Cal. Daily Op. Service 4833, 96 Daily Journal DAR 7769 (CA 1996)

Judgment of first degree murder conviction and death penalty are vacated because of “defense counsel’s constitutionally deficient performance at trial.” Other issues are then discussed that are likely to arise upon retrial. Incidental to discussing that the handgun used as the murder weapon had never been found, it is stated: “Jerry Owens, a handwriting expert employed by the Fresno Police Department, testified that, according to police records he had been furnished, ‘Don Ray Hill’ and ‘Troy Lee Nones’ were the same person, a circumstance substantiated by his comparison of handwriting exemplars.”

COMMENTARY: A case of routine admissibility.

1997

429. *People v Scheid*, 16 Cal. 4th 1, 939 P.2d 748, 65 Cal. Rptr. 2d 348, 1997 Cal. LEXIS 3701, 97 Cal. Daily Op. Service 5701, 97 Daily Journal DAR 9176 (CA 1997)

In a murder conviction the Court of Appeals reversed, finding admission of a photograph of the murder scene was sufficiently prejudicial. The Supreme Court reversed the Court of Appeals as to the photograph and remanded to the trial court to consider remaining issues raised by defendant. In search of another person's residence, police found a notebook with directions to, and a diagram of, the victims' house. The prosecutor's handwriting expert opined that defendant wrote the directions, but, on cross-examination, he acknowledged he could not attribute the diagram to anyone. Defendant's left thumbprint was on the page.

COMMENTARY: A case of routine admissibility.

2000

430. *People v Ayala*, 23 Cal. 4th 225, 1 P.3d 3, 96 Cal. Rptr. 2d 682, 2000 Cal. LEXIS 4545, 2000 Cal. Daily Op. Service 4490, 2000 Daily Journal DAR 6037 (CA 2000)

Defendant's conviction for murder and sentence to death were affirmed. A handwriting expert testified for the defense that a principal witness for the prosecution "had written text that evidently referred to heroin sales."

COMMENTARY: A case of routine admissibility.

431. *People v Sakarias*, 22 Cal. 4th 596, 995 P.2d 152, 94 Cal. Rptr. 2d 17, 2000 Cal. LEXIS 2060, 2000 Cal. Daily Op. Service 2379, 2000 Daily Journal DAR 3177 (CA 2000)

First degree murder conviction and death penalty are affirmed. After the murder, the victim's property had been pawned and charges made on her J. C. Penney account. "According to a handwriting expert, defendant had signed the pawnshop receipt and had written Viivi's address on the Penney's charge slip."

COMMENTARY: A case of routine admissibility.

2002

432. *People v Hughes*, 27 Cal. 4th 287, 39 P.3d 432, 116 Cal. Rptr. 2d 401, 2002 Cal. LEXIS 276, 2002 Cal. Daily Op. Service 738, 2002 Daily Journal DAR 961 (CA 2002)

A first degree murder conviction and death penalty are affirmed. Defendant cashed a check at a store where he formerly worked. It was later determined that the murder victim's name as payee had been changed to defendant's. "Testimony by a documents expert linked defendant's handwriting to the 'pay to order' and endorsement lines of the check."

COMMENTARY: A case of routine admissibility.

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433. *People v Neal*, 31 Cal. 4th 63, 72 P.3d 280, 1 Cal. Rptr. 3d 650, 2003 Cal. LEXIS 4426, 2003 Cal. Daily Op. Service 6149, 2003 Daily Journal DAR 7693 (CA 2003)

Defendant's murder conviction was reversed because it was error to admit confessions obtained in violation of *Miranda*. A questioned documents expert had opined that defendant had written a note left at the murder scene in the name of another person. Without admission of the two confessions, the Supreme Court said defendant would have had a strong incentive to challenge this expert testimony.

COMMENTARY: A case of routine admissibility.

434. *People v Snow*, murder conviction reversed, 44 Cal. 3d 216, 242 Cal. Rptr. 477, 746 P.2d 452, 1987 Cal. LEXIS 461 (CA 1987); murder conviction on retrial affirmed, 30 Cal. 4th 43, 65 P.3d 749, 132 Cal. Rptr. 2d 271, 2003 Cal. LEXIS 2072, 2003 Cal. Daily Op. Serv. 2875, 2003 Daily J. DAR 3671 (CA 2003); rehearing denied, 2003 Cal. LEXIS 4190 (CA 2003); certiorari denied, *Snow v California*, 157 L.Ed.2d 747, 124 S.Ct. 922, 2003 U.S. LEXIS 9042 (US 2003); habeas corpus proceeding, *People v Snow*, 2003 Cal. LEXIS 10400 (CA 2003); motion granted, application granted, 2004 Cal. LEXIS 3073 (CA 2004)

This discussion has to do with the report at 2003 Cal. LEXIS 2072.

At [\*23-24]: "Although the .38-caliber revolver with which Koll was killed was not found, defendant possessed .38-caliber ammunition, suggesting he owned or had access to a handgun that could fire such ammunition. Perhaps most damning, the telephone number of Koll's pharmacy was written in defendant's spiral-bound notebook. Although defendant denied having written it, a prosecution handwriting expert found good indications he had, and the defense offered no other explanation for the number's presence in the notebook."

During argument, one of two defense attorneys planned to argue the expert evidence. However, the judge had a different understanding and stopped him from addressing the handwriting issue. There was no formal objection and no statement on the record as to what would have been argued. The other attorney did not take up the issue. The Supreme Court said that might have been a tactical decision and the overnight adjournment permitted preparation for full argument the next day.

COMMENTARY: Expert opinion as to maker of handwritten numerals is received, though it is unclear whether the term "good indications" is the expert's or is how the Supreme Court describes the opinion. The forestalled argument on the handwriting issue is an object lesson that counsel should assure that all rulings and understandings are clear on the record, while making an offer of proof or representation for anything the court curtails, leaving no doubt as to the harm it does to one's case. Appeal and supreme courts take experts to task for basing opinions on speculation, but they themselves speculate quite regularly and conveniently, as they did in this case in basing their decision in part on the speculation about a possible tactical decision not to argue further on an issue.

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## 2004

435. *People v Valdez*, 32 Cal. 4th 73, 83 P.3d 296, 8 Ca. Rptr. 3d 271, 2004 Cal. LEXIS 4, 2004 Cal. Daily Op. Service 108, 2004 Daily Journal DAR 133 (2004); certiorari denied, *Valdez v California*, 2005 U.S. LEXIS 1458 (2005)

“A police check and credit fraud expert compared signatures on the victim’s Department of Motor Vehicles handwriting exemplar with that on the treasury check. The analysis was inconclusive, but similarities existed as to the signatures.”

COMMENTARY: A case of routine admissibility.

## 2005

436. *People v Blair*, 36 Cal. 4th 686, 115 P.3d 1145, 31 Cal. Rptr. 3d 485, 2005 Cal. LEXIS 8227, 2005 Cal. Daily Op. Service 6622, 2005 Daily Journal DAR 9057 (CA 2005)

Defendant represented himself in an earlier case of poisoning and was convicted. In this case, brought when one of his victims died from the poison, he again represented himself and was convicted. A police handwriting analyst testified that writing on an envelope containing information where to obtain poison matched defendant’s first and third requested exemplars but that the second exemplar was disguised.

COMMENTARY: A case of routine admissibility with testimony as to disguise in handwriting.

437. *People v Gray*, 37 Cal. 4th 168, 118 P.3d 496, 33 Cal. Rptr. 3d 451, 2005 Cal. LEXIS 9351, 2005 Cal. Daily Op. Service 7651, 2005 Daily Journal DAR 10483 (Cal. 2005); time for granting or denying rehearing extended, *People v Gray*, 2005 Cal. LEXIS 10710 (Cal. 2005); rehearing denied, *People v Gray*, 2005 Cal. LEXIS 12015 (Cal. 2005); certiorari denied, *Gray v California*, 549 U.S. 827, 127 S. Ct. 38, 166 L. Ed. 2d 45, 2006 U.S. LEXIS 5917 (U.S. 2006)

At page [\*8]: “Later in the morning of April 25, after he killed Reed, defendant took a further step to create a new identity for himself. Evidence showed that on that morning he took a bus to the University of Southern California Medical Center and, at 11:20 a.m., sought and received from the hospital an identification card in the name of ‘Mario Davis.’ An expert testified the handwriting on the hotel check-out receipt (Lewis Gray) and the check-in receipt (Mario Davis), and defendant’s handwriting exemplars were all written by the same person.” The expert was Deputy David Crisp.

COMMENTARY: A case of routine admissibility.

## 2007

438. *In re Ronald Lee Bell, on Habeas Corpus*; 170 P.3d 153, 67 Cal.Rptr.3d 781, 42 Cal.4th 630 (CA 2007)

At pages 790-791: “Petitioner claims next that Dorton was not credible, based on his alleged ‘showing’ that Dorton lied when she denied meeting defense investigators at a Carrows Restaurant in El Cerrito and denied signing the declaration in her name recanting her trial

testimony. The sole evidence that Dorton signed the declaration, which petitioner withdrew under compulsion of the California Rules of Professional Conduct, was the ‘impression’ of a forensic document examiner that Dorton had signed and initialed the declaration while trying to distort her signature and initials. In the view of the document examiner, the initials on the first page were ‘probably’ written by Dorton, the initials on the second page were too ‘scrawled and brief to support an opinion, and the signature was too ‘poorly written’ to support a positive identification, either, but the probability that she initialed the first page nonetheless ‘strongly indicated’ that she had signed the third page.

“The remaining evidence, however, supported Dorton’s testimony that she never met with defense investigators and, thus, never signed the declaration. Neither defense investigator could identify Dorton in a photo lineup as the woman they had interviewed and who had signed the declaration. The investigators also claimed that the woman identifying herself as Dorton had attended the interview with a man identified as her cousin, Marchon King—— yet petitioner, even after locating King, 791\*791 declined to have him testify. (See Evid. Code, §§ 412.) The referee’s finding that Dorton did not recant is therefore supported by substantial evidence, and we accept his finding.”

COMMENTARY: I reproduce the larger context for this case to illustrate how other evidence and actions can either confirm or undermine the handwriting expert’s opinion, in this case undermining that of the defense examiner. Inferring that the signature on page 3 is genuine because the initial on page one is probably genuine violates standards. First, an expert may not base an inference (here regarding the signatures) on his own prior inference (here regarding the initial). Second, an opinion regarding a writing must be based on observations of the writing itself. Third, opinions regarding initials must be based on exemplars of initials and opinions regarding signatures must be based on exemplars of signatures. Someone else may be able to name more violations by this one opinion.

## G. COLORADO CASES.

### *1. Colorado courts of appeal.*

439. *People v Davis*, Court of Appeals No. 08CA0156. (CO App. Div. VII. 2012)

It was not error to let a police detective testify as a handwriting expert. No objection was made at the time, and another expert backed up the testimony.

COMMENTARY: A case of routine admissibility.

### *2. Colorado Supreme Court.*

#### 2000

440. *In The Matter of the Estate of Spicer H. Breedon; Connell and Breedon v Stone*, 992 P.2d 1167, 2000 Colo. LEXIS 11, 2000 Colo. J. C.A.R. 284 (Colo. 2000)

“In addition, the probate court considered the testimony of a number of expert witnesses, including [\*5] two forensic toxicologists, two forensic psychiatrists, a forensic document

examiner, and two handwriting experts. After considering conflicting evidence from the various expert witnesses, the court concluded that the decedent possessed the motor skills necessary to write his will and that his handwriting on the holographic will was unremarkable when compared to other writing exemplars.”

COMMENTARY: Decedent, who was addicted to alcohol and drugs, disinherited his relatives. His heavy use of these chemicals was found not to have impaired his testamentary capacity. The appeal decision considers two issues. First, had “the probate court correctly applied the insane delusion and Cunningham elements tests” to determine testamentary capacity? Second, had the court correctly refused to dismiss two parties to the suit and so prevent their testimony under the dead man’s statute?

## H. CONNECTICUT CASES.

### *1. Connecticut trial courts.*

#### 1999

441. *Cardona v Negron*, 1999 Conn. Super. LEXIS 2131

“A handwriting expert, Clarissa M. DeAngelis, presented credible testimony verifying that by examining the handwriting on a copy of the letter, she concluded that it was authored by the plaintiff. The court finds not credible [\*5] the plaintiff’s testimony that she never wrote the letter.”

COMMENTARY: A case of routine admissibility.

#### 2001

442. *Kaufman v Cornerstone Bank*, 2001 Conn. Super. LEXIS 2497

“The attorney trial referee, in concluding that the plaintiff did not prove his claim of vexatious litigation, pointed out that the defendant employed a handwriting expert [\*11] to verify the authenticity of the plaintiff’s signature on the promissory note, and that Cornerstone made the loan to Mascia on condition that the plaintiff co-sign the note. The referee’s recommendation that judgment enter for the defendant follows legally and logically from his findings of fact.” The expert testified.

COMMENTARY: A case of routine admissibility.

443. *Benvenuti Oil Co., Inc., v Foss Consultants, Inc., et al.*, 2003 Conn. Super. LEXIS 2177 (CT Super 2003)

Expert Streeter testified to a false signature on what apparently was the original of a document submitted in court in fax form. There is extended discussion of what made the fax a forgery or copy of a forgery and thus a fraud on the court. Streeter’s opinion is given several pages.

COMMENTARY: Though a case of routine admissibility because there was no challenge as to reliability, the extensive discussion of the expert’s opinion shows the weight given it.



## 2004

444. *General Electric Capital Corp. v Barber*, 2004 Conn. Super. LEXIS 885

Ana Kyle testified for plaintiff that defendant signed the questioned document. Defendant presented no evidence other than his denial. The judge decided Ms. Kyle's evidence should be backed by other evidence so he ruled plaintiff did not meet the burden of proving authenticity.

COMMENTARY: A case of routine admissibility.

445. *Vieira v Vieira, et al.*, 2004 Conn. Super. LEXIS 2740 (Superior Ct. CT, Waterbury 2004)

Plaintiff called Jeffrey Luber, of Illinois State Police, as handwriting expert, and defendants called James Streeter, of Connecticut State Police. "Predictably, their opinions on the authenticity of the will signatures were opposed, but they did agree on the range of possible conclusions, from positive to highly probable to inconclusive." Luber said he was positive the will signatures were false, and Streeter said "that it was highly probable that the questioned signatures and the known signatures have the characteristics of the same writer." Plaintiff proved the forgery by clear and convincing evidence.

Contrary to her previous statement, the notary testified she had notarized the will August 18, 2000, and not May 22, 2000, thus she was the only witness with "nothing to gain and everything to lose." Decedent had died August 11, 2000, a week before the writing of the signature.

COMMENTARY: Mr. Streeter, well-qualified as a police expert, is not the first, and will not be the last, handwriting expert tricked by a well imitated signature. Fortunately, in this case it was physically impossible that the signatory could have written it. It is a sobering lesson for all of us to be most diligent and detailed in our forensic examinations. How many forgeries have prevailed because a handwriting expert had a hopefully momentary and rare lapse in being fully competent and conscientious? We can never know.

## 2005

446. *Bryn, et al., v Bryn*, 2004 Conn. Super. LEXIS 2676 (Conn. Super. Ct. 2004); 2005 Conn. Super. LEXIS 2713; affirmed, 944 A.2d 442, 2008 Conn. App. LEXIS 151 (Conn. App. 22, 2008)

At page [\*8] of 2005 Conn. Super. LEXIS 2713: "Peggy Kahn, the handwriting expert, confirmed that [Defendant] Roger was the author of the graffiti at the Old Greenwich railroad station. She clearly pointed out several identifying characteristics in the graffiti which she identified as consistent with the defendant's writing style. For example, the exclamation points, underlining, reference to 'fatball,' the letter 'A,' the letter 'M' and other characteristics of Roger's handwriting. This court is clearly satisfied that the defendant authored the referenced graffiti."

COMMENTARY: The plaintiffs proved much of their complaints against defendant, but they failed to show "irreparable harm and lack of an adequate remedy at law." Thus, their request for an injunction against defendant was properly denied.

447. *New Milford Bank v Jajer, et al.*, 2005 Conn. Super LEXIS 2358 (Judicial District of Litchfield, Aug. 30, 2005)

A major issue in the earlier portion of the proceeding was whether Mrs. Jajer had signed a mortgage deed in plaintiff bank's favor. "However, the plaintiff did prove that the signature bearing Mrs. Jajer's name on the mortgage deed was signed by the same person who signed the mortgage note through the expert testimony of James L. Streeter on handwriting and document examination and identification.... The court found the testimony credible and persuasive.... The court has itself compared the signatures on the mortgage deed with that on the mortgage note and finds them to have been signed by the same person." The issue could not be raised in the present portion of the proceeding "under principles of res judicata and collateral estoppel."

There are other interesting aspects to the case, such as defense counsel could not be present in a prior proceeding because he had to be present at a hearing on his own disbarment.

COMMENTARY: A case of routine admission.

448. *Stay Alert Safety Services, Inc., v Fletcher*, 2005 Conn. Super. LEXIS 1915

"Dr. Marc Seiter is a handwriting expert. He concludes, after comparing numerous other signatures of Christopher Fletcher, that the defendant did in fact sign the employment contract. The court agrees with the opinion of Dr. Seiter and finds the defendant did in fact sign [\*3] the employment contract."

COMMENTARY: I do not know of a Marc Seiter, but there is a Marc Seifer, so the name might be misspelled. Dr. Seifer issued a monograph in which he maintains the "Mormon Will" that Howard Hughes allegedly gave to Melvin Dummar is genuine. See *The Handwriting Forgeries of Howard Hughes*, Kingston, RI, Meta Science Publications, 1987.

449. *Superior Amusement Companies, Inc., v Night Games Corp., et al.*, 2005 Conn. Super. LEXIS 32

"Consistent with his denial of the admission request, Riggio denied at trial that he signed the agreement at issue. Riggio produced an [\*14] expert at trial who testified that, in his opinion, the signature on the document 'was not written by Daniel Riggio' and supported his decision with reasons. The ATR believed Superior Amusement's expert to be more credible and, as previously discussed, found the signature on the document to be Riggio's signature.

"The trial consisted, in part, of a classic 'battle of the experts.' The fact that Riggio didn't merely deny that his signature was genuine, but produced a handwriting expert in support of his position, evinces that the denial was in good faith.

"In view of the foregoing, the court finds that Riggio's failure to admit the genuineness of his signature was reasonable. Therefore, the court denies the application of Superior Amusement for an order requiring the payment of reasonable expenses incurred by it in proving that Riggio's signature was genuine."

COMMENTARY: Without expressing an opinion on good faith in this case, some of us have experienced litigants with such good faith that they assiduously shop until they find an expert who can give plausible reasons for any opinion. I doubt that the court's logic in this case is a legal precedent even in Connecticut.

## 2007

450. *Schapperoew v Dowdy*, 2007 Conn. Super. LEXIS 3536

“The plaintiffs, in challenging the occupancy agreement, presented a handwriting expert, Anna Kyle. She had previously testified as an expert in well over one hundred (100) cases in both federal and state courts. In [\*11] her opinion, the father had not signed the Occupancy Agreement.

“She had the father in her office, he sat at a desk where he gave four handwriting exemplars. She compared the signatures from the exemplars, a diagnostic laboratory slip from October 3, 1996, part of a rental agreement from March 22, 2005, five checks from 2006 and one from 2005 and the rental agreement dated May 1, 2003 with the signature on the Occupancy Agreement of January 7 or 8, 2007. (Plaintiff’s Exhibit # 7 and 8) and (Defendant’s Exhibit # D).”

COMMENTARY: Ms. Kyle took requested exemplars from the opposing party, so she did not violate the *post litem motam* rule. She also had a good number of collected exemplars to go with the requested exemplars. Ms. Kyle, who spells her name with one “n,” is a member of NADE and author of two well researched books on the Lindbergh kidnaping case, *The Dead Poets Plus One* and *Two Men and One Pair of Shoes*.

## *2. Connecticut Courts of Appeal.*

## 1998

451. *Churchill, et al., v Allessio, et al.*, 51 Conn. App. 24 (CT App. Ct. 1998)

“At issue in this case was whether Churchelow’s signature actually appeared on the 1967 will. In an attempt to prove that Churchelow had, in fact, signed the 1967 will, the defendants retained a document examiner, 34\*34 John Sang, to authenticate the signature appearing on the 1967 will as Churchelow’s true signature. The plaintiffs claim that the handwriting exemplars relied on by Sang in his comparisons were, themselves, not properly authenticated and, therefore, could not have provided the basis for those comparisons.”

COMMENTARY: A case of routine admissibility.

## 1999

452. *State v Stevenson*, 53 Conn. App. 551, 733 A.2d 253, 1999 Conn. App. LEXIS 218 (Conn. App. 1999)

James Streeter answered on cross-examination that it is possible another document examiner could have come to a different opinion, at least as to degree of certainty. In argument defense counsel used that remark to downplay Streeter’s testimony. The prosecutor argued on rebuttal that, if Streeter had said it is possible someone other than defendant could have written the questioned document, defense would have called Streeter. This was proper, common sense argument.

COMMENTARY: Attorneys and judges are free to interpret, reinterpret or misinterpret what experts say in order to support an enticing conclusion. But they are not so adept at misreading or

misinterpreting as the anti-expert experts are, such as in the *Velasquez* case that is discussed under Federal Courts of Appeal for 1995.

## 2000

453. *Berty v Gorelick, et al.; Gorelick, et al., v Montanaro*, 1996 Conn. Super. LEXIS 2091; affirmed, 59 Conn. App. 62, 756 A.2d 856, 2000 Conn. App. LEXIS 349 (CT App 2000); certiorari denied, 761 A.2d 751, 254 Conn. 933 (CT 2000)

2000 Conn. App. LEXIS 349:

“Other testimony [\*10] at trial, not explicitly mentioned in the court’s memorandum of decision but contained in the trial transcript, pertains as well to Gorelick’s misuse of Berty’s funds. [Footnote omitted.] For example, Gorelick admitted that he had forged Berty’s name on at least two checks payable to himself that totaled approximately \$19,477. Gorelick produced a written authorization to sign checks bearing Berty’s signature, which an expert for Montanaro testified had been altered and cut down from its original size. The expert also testified on the basis of his examination of the state of dryness of the written ink that Berty’s signature was written at a significantly earlier date than the written body of the document. Finally, the expert testified that another letter bearing Berty’s signature exhibited signs of alteration and forgery.”

COMMENTARY: A case of routine admissibility in which other document examination skills besides handwriting examination are involved.

## 2001

454. *American Heritage Agency, Inc., et al., v Gelinas, et al.*, 1999 Conn. Super. LEXIS 1693; affirmed, 62 Conn. App. 711, 774 A.2d 220, 2001 Conn. App. LEXIS 165 (Conn. App. 2001)

“At trial, the parties presented testimony from handwriting experts on the question of the authenticity of the defendant’s signature on the March 1, 1989 minutes of American Heritage Agency, Inc. The defendant’s expert, Ana Kyle, testified that the signature of the defendant on that document was not authentic. The plaintiff’s expert, Clarissa DeAngellis, testified that the signature was authentic.

“The defendant disagrees with the court’s factual findings and requests that we consider the evidence and reach a different conclusion. ‘It is fundamental [\*14] appellate jurisprudence that an appellate court does not retry the case and substitute its judgment for that of the trial court. *Malmberg v. Lopez*, 208 Conn. 675, 679, 546 A.2d 264 (1988). Rather, it is the function of the Appellate Court to determine whether the decision of the trial court is clearly erroneous.’ *Century Mortgage Co. v. George*, 35 Conn. App. 326, 329-30, 646 A.2d 226, cert. denied, 231 Conn. 915, 648 A.2d 150 (1994).....

“Here, the court found that the signature on the March 1, 1989 minutes was that of the defendant. The court found that the plaintiff had no reason to forge his signature or to have the defendant’s signature forged on the 1989 minutes. The court found the testimony of the plaintiff’s certified document examiner to be more credible than the testimony of the defendant’s examiner.”

COMMENTARY: It seems poignant that the decision makes it a point to indicate which expert was certified. I believe DeAngelis is correctly spelled with only one "l."

## 2002

455. *People's Bank v Curtin, et al.*, 74 Conn. App. 98, 812 A.2d 68, 2002 Conn. App. LEXIS 610 (Conn. App. 2002)

Both sides presented handwriting experts who were equally sure of opposing opinions. The trial court ruled plaintiff had not met his burden to prove fraud by clear and convincing evidence.

COMMENTARY: A case of routine admissibility.

456. *State v Yusuf*, 70 Conn. App. 594, 800 A.2d 590, 2002 Conn. App. LEXIS 349

Defendant sought to impeach testimony of his girlfriend by showing she wrote three letters to him, only one of which she admitted to. Clarissa DeAngelis testified as defendant's handwriting expert and Kenneth Zercie testified for prosecution on rebuttal.

The letters were admitted into evidence, not for their substantive statements, but so that the jury could evaluate the expert evidence.

COMMENTARY: A case of routine admissibility.

## 2003

457. *Bieluch v Cook*, 2003 Conn. Super. LEXIS 3473 (Superior Ct Fairfield CT 2003); original judgment of trial court for divorce affirmed, *Cook v Bieluch*, 32 Conn. App. 537, 629 A.2d 1175 (1993); certif. denied, 228 Conn. 910, 635 A.2d 1229 (1993)

This discussion concerns 2003 Conn. Super. LEXIS 3473. Husband, Bieluch, is petitioner, and wife, Cook, is defendant.

At original hearing for divorce action, both parties had graphoanalysts to testify as handwriting experts. Note 2 states: "The defendant's expert had credentials beyond her completion of a three-year correspondence course from the International Graphoanalysis Institute in Chicago, Ill." And Note 7 states: "As the defendant observes, her expert at the trial of the dissolution action, Ana Dobensky, had testified as an expert document examiner many times in Connecticut Superior Court." The divorce court found with defendant's expert that her signature on deeds transferring her real property interests to petitioner were forged. At a grievance hearing to cancel petitioner's attorney's license he had an FBI trained expert who said the signatures were genuine. Defendant wife did not participate in the grievance hearing, and presumably her trial expert did not testify. The grievance was dismissed.

Petitioner filed for new trial on issue of the forgery on basis of newly discovered evidence, namely he had no idea his original expert was unqualified as a graphologist or graphoanalyst. However, due diligence would have uncovered readily available evidence of scepticism regarding graphology and its insufficiency in itself to qualify one as a document examiner, one source cited by this decision being National Association of Document Examiners (NADE) and its journal. On basis of failure to exercise due diligence prior to and during the original trial, the petition for a new trial was denied.

As reported in 629 Atl.2d 1175, the Appellate Court affirmed the trial court. One of plaintiff's complaints was that the trial court credited defendant's expert and not his.

COMMENTARY: It has long been the official policy of NADE that training solely in character handwriting analysis is insufficient to qualify one to act professionally as an examiner of documents and handwriting. Some twist such cases as this one into saying what they do not, namely that no one with any background in graphology or graphoanalysis can ever be a document examiner. This only underlines the need to read completely a citation given by an opponent before believing that a legal case, or any other authority for that matter, has been accurately quoted and correctly interpreted.

458. *State v O'Neil*, 65 Conn. App. 145, 782 A.2d 209, 2001 Conn. App. LEXIS 421; affirmed, 262 Conn. 295, 811 A.2d 1288, 2003 Conn. LEXIS 3

Defendant's conviction of attempted murder was reversed and the trial court directed to enter a judgment of not guilty. While in jail, a letter from defendant to his mother was intercepted. Inside was a second envelope with a coded message to an associate to kill the chief witness in defendant's upcoming murder trial. James Streeter, a document examiner, identified defendant as writer of the letter to his mother and of the coded letter. Michael Birch, a cryptanalyst with the FBI, testified that the coded letter was in a simple substitution code. The case report transcribes the decoded text. The intercepted coded letter was insufficient grounds for a charge of attempted murder.

COMMENTARY: A case of routine admissibility.

459. *State v Ferraiuolo*, 80 Conn. App. 521, 835 A.2d 1041, 2003 App. LEXIS 535; appeal denied, 267 Conn. 916 (Ct. 2004)

Defendant's murder conviction was affirmed after his second trial. On issue of his signature on a Miranda waiver form and statement, no expert testified at the first trial. In a suppression hearing at the second, "The handwriting expert, James Streeter, testified that he had examined the signature on the waiver form and statement, and compared them to the known signature of the defendant. Streeter was unable to verify that the signature...belonged to defendant. Streeter...could not eliminate the defendant as being the author...."

Earlier it was stated: "The court noted that the signature on the statement was not similar to the signature found on the motions that the defendant had filed in court. The court then ruled...any discrepancies...pertained to the weight of the evidence rather than to its admissibility."

COMMENTARY: A case of routine admissibility.

## 2005

460. *State v Mulero*, 91 Conn. App. 509, 881 A.2d 1039, 2005 Conn. App. LEXIS 411 (Conn. App. 2005)

A handwriting expert testified that defendant wrote script on three DMV applications and rated the certitude at nine on a scale of one-to-ten.

COMMENTARY: Such numerical statements of probability are outside the generally accepted standard for expressing expert opinions in document examination.

## I. DELAWARE CASES.

### 1. Delaware Trial Courts.

#### 1999

461. *State v Tillmon*, 1999 Del. Super. LEXIS 42 (Superior Court, New Castle)

A handwriting expert testified that on the first visit to obtain exemplars, Tillmon refused and on the second was uncooperative. No comparison was made.

COMMENTARY: Such behavior can be argued to show consciousness of guilt.

#### 2002

462. *Reagan v Randell, et al.*, 2002 Del. Ch. LEXIS 84 (Court of Chancery, New Castle 2002)

Plaintiff presented testimony of a handwriting expert that her signature on a shareholder's agreement was forged. Defendant represented he had an expert to testify otherwise but never presented the expert.

COMMENTARY: A case of routine admissibility.

#### 2003

463. *State v Jones*, 2003 Del. Super. LEXIS 240 (Superior Ct DE New Castle 2003)

Before the *in limine* hearing, defendant withdrew challenge to fingerprint expert testimony but pressed that against handwriting. The State limited its proffer to having Georgia Ann Carter testify only as to her observations of similarities and differences. After a thorough review of the case law, the Court stated in footnote 27: "Despite the fact that the State no longer intends to offer Ms. Carter's ultimate opinion that Defendant authored the note in question, there is substantial post-Kumho authority that supports the admissibility of such evidence in the appropriate case." Earlier a trial judge of the same court had ruled handwriting expertise admissible as a technical skill that was both relevant and reliable.

COMMENTARY: The case report is recommended as an excellent review of the arguments against handwriting expertise and of the response of the courts. The report notes that Ms. Carter was also properly admitted in *U.S. v Edwards*, 816 F. Supp. 272, 1993 U.S. Dist. LEXIS 3091 (D DE 1993), which was discussed previously herein.

#### 2006

464. *State v Cooke*; relief from prejudicial joinder denied, and upon motions *in limine* to exclude certain evidence, 909 A.2d 596, 2006 Del. Super LEXIS 464 (Super. Ct. DE New Castle 2006); motion to transfer denied, 910 A.2d 279, 2006 Del. Super LEXIS 421; motions *in limine* granted in part and denied in part, 914 A.2d 1078, 2007 Del. Super. LEXIS 10

Defendant challenged ten types of expert testimony. DNA would not be introduced by the State; video enhancement would be subject to a later *Daubert* hearing; voice identification was

inadmissible as was fabric impression; five others were admissible; and the proposed handwriting comparison was admissible in part and inadmissible in part. The crux of the handwriting ruling was the nature of requested exemplars taken from defendant by Georgia Carter of the Delaware Police State Crime Lab. Those exemplars which in any way exhibited spelling and grammatical characteristics of defendant's writing were inadmissible.

The report provides extensive discussion of the constitutional issue whether soliciting a defendant's habit of spelling or use of grammar constituted self-incrimination. The court accepted the reasoning of those courts which said that, whereas handwriting itself was automatic and thus non-testimonial or minimally so, the spelling and grammatical errors in writing required some degree of mental deliberation, and so they were testimonial, the writer in effect stating: "This is how I spell and use grammar." Thus, to put the writer in a position to exhibit these traits was unconstitutional.

COMMENTARY: However much one disagrees with rulings such as this one, and I disagree on more than one ground, it seems to be the dominant legal ruling in this modern era. In the past, spelling and grammar were routinely used as part of the evidence for handwriting identification. I recommend this case report for three very important reasons. First, handwriting experts might have to modify their way of taking requested handwriting exemplars in criminal cases so as not to run afoul of the legal restriction in *State v Poole* if it has been adopted in their state or Federal Circuit. Second, this case report surveys the legal reasoning behind the alternative rulings on the issue. Third, the case report cites most of the modern cases that have addressed the issue.

465. *Williams v Peck*, Connecticut Statewide Grievance Committee, Grievance Complaint #05-1129. Determination made May 3, 2006.

An attorney was found in violation of professional rules of conduct, one being he committed forgery of letter from client and provided it as false evidence in hearing in Superior Court, New Haven. Ana Kyle testified at hearing for Peck, Respondent, and James C. Streeter and Greg Kettering for Disciplinary Counsel.

COMMENTARY: A case of routine admissibility.

2007

466. *Swinford v. World Aviation Systems, Inc.*, 2007 Del. Ch. LEXIS 129 (Court of Chancery, Kent)

"The key to WASINC's contention that Swinford did, in fact, sign the Employment Agreement is the testimony of Gerald B. Richards ('Richards'), an experienced forensic document inspector and analyzer of handwriting. His testimony, totally credible and based on years of experience, was also unequivocal: he was of the opinion, at the highest [\*6] degree of confidence one can have as a handwriting expert, that no one other than Swinford could have signed the Employment Agreement. n9 He explained his analysis...." There then follows part of Richards' testimony.

COMMENTARY: Footnote 9 reads: "Richards worked as a document examiner for the Federal Bureau of Investigation for two decades. (Tr. 208-11). He clearly satisfies any standard required for an expert in this area."



## *2. Delaware Supreme Court.*

### 2007

467. *Patterson v State*, 925 A.2d 504, 2007 Del. LEXIS 187 (Del. 2007)

The State presented the testimony of Georgia Carter, a handwriting expert.

COMMENTARY: A case of routine admissibility.

### 2012

468. *In re the Estate of Norris E. Hammond. Hammond and Jones v Satterfield*, Civil Action No. 5611-VCG. (Court of Chancery of Delaware, 2012)

“In order to prove that the 2009 Will was a forgery, at trial, the Petitioners presented the testimony of an expert, Mr. R. David Wilkinson. Wilkinson testified that the signature purporting to be Hammond’s on the 2009 Will was, in fact, in the handwriting of another. Wilkinson reached this conclusion by comparing the signature on the 2009 Will to that of known exemplars of Hammond. The signature on the 2009 Will appears, to the lay eye, consistent with the exemplars. Wilkinson, however, noted technical differences between the two and opined that whoever signed the 2009 Will attempted to copy a known signature of Hammond.”

Later the court says: “The Petitioners, of course, could have called the notary and witnesses to the 2009 Will. There is no suggestion that any of those individuals are unavailable, and failure to call them represents a tactical decision on the part of the Petitioners. As the record stands, however, I am left with the sworn statements of the witnesses, juxtaposed against the opinion of the handwriting expert. Based on these circumstances, I cannot find by clear and convincing evidence that the signature is not that of Hammond.”

COMMENTARY: I am sure every expert witness of fairly extensive experience has had cases where clients economized in some way, considering evidence sufficient without the additional that the expert suggests. Though I cannot know whether such was the situation, the case report suggests the petitioners might have been victims of their own economizing on preparation for trial.

### 2013

469. *Hurst v State*, No. 297, 2012. (DE 2013)

“(14) The State had been, throughout the trial, attempting to locate Lindsay Taylor, the female seen entering the house with Hurst the day of the search. The Superior Court had issued a capias for Taylor. Unable to find her, the State rested its case without calling her to the stand. That same day, the defense was scheduled to call its first witness, handwriting expert Rodney B. Hegman. Because Hegman was delayed at another trial in Wilmington, two hours away, the court recessed until the next morning. When the trial resumed, the State moved to reopen its case as Taylor had been found. Defense counsel objected to the State’s motion to reopen. During his argument on the objection, Defense Counsel referred to an off-the-record conversation he had with the Deputy Attorney General.”

The two attorneys had different recall of the critical part of the conversation as to whether the Deputy Attorney General had given his word not to reopen his case in chief to call Taylor rather than only calling her as rebuttal if defense gave an opening. The trial judge ruled in favor of the State.

COMMENTARY: Although it is not specifically stated that Hegman testified, I assume defense counsel would have continued with his planned defense. In any case, defendant's conviction was upheld.

## J. FLORIDA CASES.

### *1. Florida Courts of Appeal.*

#### 1999

470. *Larman v State*, 724 So. 2d 1230, 1999 Fla. App. LEXIS 90, 24 Fla. L. Weekly D 154 (Fla. App. 1999)

In a felony murder case a handwriting expert testified Larman forged the victim's check after the murder.

COMMENTARY: A case of routine admissibility.

#### 2001

471. *Acosta v State*, 798 So. 2d 809, 2001 Fla. App. LEXIS 15024, 26 Fla. L. Weekly D 2543 (Fla. App. 2001)

"The basis of the charges in this case were that appellant and two other people forged and cashed a check. One of the others involved, Riley, admitted her complicity, and testified for the state. After the state's handwriting expert testified, defense counsel asked the expert whether he knew what happened to any handwriting samples taken from witness Riley. The expert answered that the only samples submitted to [\*2] him were of appellant's handwriting.

"Following that testimony, the state recalled the detective and asked him why handwriting samples had not been taken from Riley. Appellant objected, but the court overruled the objection. The detective answered: 'Up until that point, everything Sarah Riley told me appeared to be truthful.' Appellant then moved for a mistrial, but the trial court denied the motion, instead instructing the jury to disregard the comment.

"It is clearly error for one witness to testify as to the credibility of another witness. *Boatwright v. State*, 452 So. 2d 666, 668 (Fla. 4th DCA 1984) ('It is an invasion of the jury's exclusive province for one witness to offer his personal view on the credibility of a fellow witness.'). It is especially harmful where the vouching witness is a police officer because of the great weight afforded an officer's testimony. *Page v. State*, 733 So. 2d 1079 (Fla. 4th DCA 1999)"

COMMENTARY: Not counting the dissent, I quote about half of this very short opinion because of the issue of bolstering another witness's testimony by testifying to that witness's credibility or truthfulness. It is also against the rules to bolster one's own expert testimony by stating how others reviewed one's work and came to the same opinion, these others being

unnamed and/or unavailable for cross-examination. Both violations, especially the second, are mostly practiced with impunity. Some law enforcement experts shame their fellows in the service by routinely describing how supervisors and peers, unnamed and unavailable of course, reviewed their work and endorsed it. Associations should consider such violations of the legal rules as serious, unethical conduct meriting correction by, or dismissal from, the association.

## 2002

472. *Deakter, as Successor Trustee of the Mendelson Living Trust, v Menendez*, 830 So.2d 124 (Ct. App. FL 3 Dist. 2002)

The concurring opinion states at page 131: “The defendant has introduced an entirely meaningless defense in the form of document examiner testimony. The defendant takes the position that he cannot be held liable unless the original note is produced for examination by his expert document examiner, so the document examiner can offer an opinion about whether the defendant signed the note. Since the original is lost, the defendant claims he is entitled to have the case dismissed. And in the meantime the defendant has produced expert document examiner testimony (based on examination of the xerox copy) to suggest that the defendant’s signature on the 1995 note may be a forgery.”

COMMENTARY: This is a case of a growing routine excuse: Unless the opposing party produces the original document, their case cannot be proven and mine must be accepted on my word. Unfortunately, some document examiners, who tout their limitations as the limitations of all others, have created the myth that only original documents can give definite, or even barely reliable, evidence. Some even refuse to work a case without original documents. Thus the party who destroys or sequesters original documents is rewarded.

## 2006

473. *Sanchez v Mondy and Mondy*, 936 So. 2d 35, 2006 Fla. App. LEXIS 11964, 31 Fla. L. Weekly D 1922 (Fla. App. 2006); rehearing denied, 2006 Fla. App. LEXIS 15701 (Fla. 2006); appeal after remand, *Mondy v Sanchez*, 972 So. 2d 1032, 2008 Fla. App. LEXIS 463, 33 Fla. L. Weekly D 238 (Fla. App. 2008)

*Sanchez v Mondy*, 2006 Fla. App. LEXIS 11964:

The finding by the trial court in favor of Mondy was reversed and remanded because the judge should not have relied on the testimony of the handwriting expert. A litany of errors in the testimony is given, which includes:

1. The exemplars for Mrs. Mondy were not before the court;
2. The documents had not been authenticated by any legitimate manner;
3. The purported signatures were not shown to be by Mrs. Mondy;
4. When the expert was shown a listing agreement with a known signature, she said she could not perform an in-court comparison;
5. The expert had been disclosed after the cut-off date for discovery;
6. The motion *in limine* to exclude the expert was not heard till the day of the testimony so preparation for cross-examination was precluded;

7. The expert had only six photocopies for exemplars; and

8. The listing agreement had not been shown to her, but it had all the traits she said proved the forgery, including misspelling of the first name.

All this made the expert's opinion speculative and her testimony trial by ambush. The ruling in Mondy's favor was reversed and the case remanded for decision without consideration of the handwriting expert's testimony.

Mondy v Sanchez, 2008 Fla. App. LEXIS 463:

On remand the trial court determined that without the handwriting expert's testimony, testimony of Mondy's witnesses was "incredible" and that Sanchez had proven specific performance under the contract at issue. This decision was affirmed. Since the handwriting issue was fully considered and decided in the earlier opinion, this case is placed chronologically as 2006.

COMMENTARY: Regarding the *Sanchez v Mondy* decision, except for the discovery cut-off date, the eight points listed are all items an expert would want to bring to the attention of the client/attorney as soon trial testimony is mentioned. The expert should be thankful her name was not given in the decision.

Regarding the *Mondy v Sanchez* decision, it is a delight to read the word "incredible" being used in its proper meaning, "not able to be believed." Whenever the word is used in the media it means more believable than believable and more wonderful than wonderful. It is incredible how often the word is used, how rarely it is used correctly, and how infectious its misuse can be. On reconsideration, make that last sentence to read: "It is an unfortunate fact how...."

2007

474. *Turovets v Khromov*, 943 So. 2d 246, 2006 Fla. App. LEXIS 18584, 31 Fla. L. Weekly D 2783; rehearing denied, 2007 Fla. App. LEXIS 102 (Fla. App. 2007)

"During discovery, Linda Hart, a handwriting expert, testified that based on the absence of variations n1 between Khromov's signature and the potential forgery, a probability existed that someone forged Khromov's signature. The expert further opined that although there was not a 'high probability' of forgery, the opportunity to examine the original deed might provide a more definite conclusion. Leonid refuted the alleged forgery, maintaining that he saw Khromov sign the deed. Alex Katz, who is not a party to these proceedings, corroborated Leonid's testimony, [\*3] stating he too observed Khromov and Shalom Silverman, the notary, sign the deed. The notary, who was also deposed, stated he was between sixty and seventy percent positive someone forged his signature because although portions of the purported signature were 'exactly like' his signature, his first name was misspelled and a few letters were written differently."

Footnote 1 reads: "Hart explained that '[t]here are always variations' to a person's signature as no one signs their name the same way every time. Thus, the absence of variations would indicate that the signature was traced."

COMMENTARY: The footnote is interesting and presumably left out some of the explanation. Complete absence of variations would indicate a cut-and-paste product, while a tracing would have some variation from its model, the human hand not being a perfect reproduction machine. I suspect all handwriting experts have had the experience of explaining a

technical point in detail to an attorney or court only to have it repeated simplistically.

2012

475. *Miller v State*, No. 4D09-3447. (FL App. 2012)

Defendant, a minor at the time of the crimes charged, was convicted of robbery, murder and other violent crimes. He was given four consecutive life sentences without possibility of parole. Conviction and sentence were reversed and the case remanded for a new trial

Two document examiners were given writing found at the scene of the crime along with samples from 12 people, modest amounts for 11 of them and 75 pages for defendant. At trial both examiners testified that part of their procedure was peer review of their work with the peer reviewer agreeing with their opinion. Defendant entered an objection of bolstering for both examiners in giving this testimony, but the trial judge overruled both objections. Florida cases are cited that make such bolstering by expert witnesses error. In this case the handwriting testimony was essential to tie defendant to the scene of the crime, so the error was not harmless.

The opinion summarizes the matter: "The State argues that no improper bolstering occurred because the experts 'were simply providing a general explanation of the [peer review] process.' While that may be true, it does not eliminate the harm of admitting the opinions of non-testifying experts to bolster the testimony of those testifying. Instead, it deprives the opposing party of the opportunity to cross-examine the non-testifying experts." The report then goes on to give replies to arguments by the State why the impermissible should be permitted in this case.

COMMENTARY: If you are an expert in Florida, especially one who works for the criminal defense, read this case and take note of the case citations on the issue of bolstering. I have testified in cases where opposing document examiners, always with government service background, testified that unavailable, and even unnamed, experts agreed with all they were saying, and there was nary an objection to this self-bolstering. The corruption of peer review of underlying method and theory into a cooperative of concurring buddies in a big lab, or even in a small coffee-klatsch like group, is injecting the poison of bolstering into forensic testimony to the eventual status where it might preempt honest independent work followed by honest independent testimony.

It is refreshing to see such a clear condemnation of a very common but illegitimate practice. It might be a worthwhile project to survey all appeal and supreme courts, both state and federal, for similar rulings against such underhanded methods of prosecution. From a homey style argument, one might say such experts, along with those who testify as a mutual admiration society, are ganging up on a victim who is more than hampered in defending himself. Such tactics are only needed when there is either insufficient evidence against the guilty or no evidence against the innocent.

476. *Proctor v State*, Case No. 5D11-1142. (FL App. 5th Dist. 2012)

Detective Garrett Lane identified defendant as writer of bad checks, but he qualified neither as an expert or lay witness to defendant's handwriting. Conviction reversed and remanded.

COMMENTARY: This case is included lest someone cite it as ruling that a handwriting expert was inadmissible.

## 2. Florida Supreme Court.

### 2001

477. *Ferguson v State*, 789 So. 2d 306 (FL 2001)

“Dr. Peritz Scheinberg, an expert in neurology, testified that Ferguson did not suffer from any neurological abnormality.

“In addition to this expert testimony, the State produced the testimony of five corrections officers who had opportunities to observe and interact with Ferguson. The officers all testified to observations of behavior which appeared inconsistent with 314\*314 the delusions Ferguson was allegedly suffering from. Further, the officers indicated that Ferguson would only act irrationally, i.e., consistent with the findings of paranoid schizophrenia, shortly before and after mental evaluations.

“Finally, David Clark, an institutional counselor at the Florida State Prison, and Frank Norwich, a document examiner from the Metro Dade Police Department, testified that Ferguson was the likely author of several letters directed to the trial court. Drs. Haber and Miller opined that the level of thought and organization exhibited in the letters in question were inconsistent with Ferguson’s portrayal of his condition.”

COMMENTARY: I quote the larger context of Norwich’s testimony to illustrate how at times a handwriting expert is but one small cog in the machinery of proof at trial. In a hearing for post conviction relief, Ferguson attempted to prove mental incompetence. He was largely competent at behaving mentally incompetent but with a tad too much incompetence to succeed.

### 2002

478. *Gorby v State*, 819 So. 2d 664, 2002 Fla. LEXIS 636, 27 Fla. L. Weekly S 315 (Fla. 2002)

“Two witnesses testified that they saw Gorby with the victim on May 6. The next day the victim’s neighbor saw a note on the door of his house trailer. The note, saying he would return on Tuesday, aroused her suspicions, and, on entering the trailer, she found the victim dead of head injuries. A handwriting expert testified that Gorby, not the victim, wrote the note, and Gorby’s fingerprint was [\*3] found on a jar in the victim’s kitchen. Receipts tracked the victim’s credit cards through Louisiana and Texas.”

COMMENTARY: A case of routine admissibility.

### 2003

479. *Spann v State*, 772 S2 38 (FL 2001); 857 S2 845, 28 FL L Weekly S 784, 2003 FL LEXIS 465 (FL 2003); rehearing denied, 2003 Fla. LEXIS 1731 (FL 2003)

The report at 772 S2 38 only speaks of issue of double jeopardy. In the report at 857 S2 845, the court summary in part states: “(1) *Frye* standard did not apply to forensic handwriting identification evidence....” Defendant wrote a note telling another person how he should testify. He denied writing it, but then admitted doing so when handwriting experts were hired and he was ordered to give samples. The State wanted its expert to testify that the samples had been

intentionally disguised. A *Frye* hearing was held on admissibility of expert testimony as to determining disguise in handwriting. “The trial court found that the proffered testimony would ‘assist the jury in determining the fact in issue,’ that the proffered testimony ‘is indeed based on scientific principle, which has gained acceptance in the field of Forensic Document Examination,’ and that the ‘witness is qualified....’” However, the expert was ordered not to render an opinion of intentional disguise, only providing the various possible explanations for the traits in the handwriting. On appeal, defendant shifted focus from admissibility of testimony as to disguise to reliability of the entire field of handwriting expertise. That objection was not preserved at trial, but, if it had been, forensic handwriting identification is admissible in Florida which follows *Frye*.

COMMENTARY: There has been a great deal of primary research published on the indicia of deliberate disguise in handwriting and how to discern it, and there are a number of reported court cases confirming the admissibility of such testimony. It is delightful to see a law review article, written to prove handwriting expertise inadmissible, quoted in support of admissibility. Jennifer L. Mnookin wrote a paper as argument for the inadmissibility of handwriting expertise. “Scripting expertise: The history of handwriting identification evidence and the judicial construction of reliability.” 87 *Virginia Law Review*, 1723-1845 (December 2001). The Court quotes it in support of admissibility, as did the court in *Valente v Wallace, et al.*, 332 F.3d 30, 2003 U.S. App. LEXIS 11803, 61 Fed R Evid Serv (Callaghan) 993 (1 Cir 2003), which was discussed herein previously.

I wonder if anyone has congratulated Professor Mnookin on having been quoted by the Supreme Court of Florida.

## 2004

480. *Globe v State*, 877 So.2d 663 (E) (FL 2004)

Document examiner, Karen Smith, testified to defendant’s having written certain words.

COMMENTARY: A case of routine admissibility.

481. *Rodgers v State*, 2004 Fla. LEXIS 2120, 29 Fla. L. Weekly S 724 (Fla. 2004)

“Donald Pribbenow, a Florida Department of Law Enforcement crime lab [\*9] analyst, testified as a handwriting expert regarding the two lists recovered from Lawrence’s residence. He verified that the lists were in Lawrence’s handwriting.”

COMMENTARY: A case of routine admissibility.

## 2005

482. *Brown v State; Brown v Crosby*, 894 So. 2d 137, 2004 Fla. LEXIS 2173, 29 Fla. L. Weekly S 764; rehearing denied, 2005 Fla. LEXIS 114 (Fla. 2005)

It was not ineffective assistance for defense counsel not to challenge handwriting exemplars or to cross-examine the state’s handwriting expert since the testimony agreed with what defendant said and so enhanced his truthfulness.

COMMENTARY: One wonders why the prosecution presented the handwriting expert's testimony since it had the defendant's admission.

## 2008

483. *Deparvine v State*, 995 So. 2d 351, 2008 Fla. LEXIS 1686, 33 Fla. L. Weekly S 784 (Fla. 2008)

"A notarized bill of sale from Rick to Deparvine, dated November 25, 2003, [\*7] was also discovered indicating a purchase price of \$ 6,500. Susan A. Kienker, who notarized this bill of sale, later testified that Rick, whom she knew personally, asked her to notarize the bill of sale on November 25, 2003, and handwriting expert Don Quinn confirmed Rick's handwriting on the bill of sale as authentic."

COMMENTARY: A case of routine admissibility.

## K. GEORGIA CASES.

### *1. Georgia Courts of Appeal.*

484. *Cooper v State*, 253 Ga. App. 242, 558 S.E.2d 786, 2002 Ga. App. LEXIS 18, 2002 Fulton County D. Rep. 189 (Ga. App. 2002)

Cooper was convicted of raping his daughter-in-law and moved for a new trial on basis of newly discovered evidence in form of a letter from the victim recanting her complaint. Cooper's handwriting expert testified the victim wrote the letter while the state's expert testified she had not, and the victim denied having written it. The Court of Appeals affirmed denial of the motion for new trial, noting that the author of the letter misspelled the victim's name when signing it.

COMMENTARY: The trial judge was finder of fact on the motion and his giving credibility to one witness rather than another would not be disturbed unless clearly erroneous.

485. *Lively, et al., v Southern Heritage Insurance Company*, 256 Ga. App. 195, 568 S.E.2d 98, 2002 Ga. App. LEXIS 868, 2002 Fulton County D. Rep. 2036 (Ga. App. 2002)

Lively's handwriting expert testified that Lively did not sign one document but probably signed a second.

COMMENTARY: A case of routine admissibility.

## 2003

486. *Ferguson v State*, 584 SE 2d 618, 262 Ga. App. 28 (GA Ct. App. 2003)

At page 620: "The chief forensic document examiner at the State Crime Lab, Arthur T. Anthony, testified as an expert. Anthony, a board-certified document examiner, conducted testing on a lined notepad found in the vehicle that Ferguson was using. By studying indentations that appeared on a blank sheet of paper from the notepad, Anthony was able to discern 'the wording of "I" then the words "have a gun," "cash."'"



COMMENTARY: I think it was in the novel *The Man with the Golden Gun*, that James Bonds write notes on a pad of paper. He removes several sheets so no one could later decipher his notes from indentations. If criminals read more, they might learn basic precautions to take in their professional activities. A good education helps success in any career.

## 2004

487. *Poole v State*, 270 Ga. App. 432, 606 S.E.2d 878, 2004 Ga. App. LEXIS 1468, 2004 Fulton County D. Rep. 3707 (GA App. 2004)

The Georgia constitution provides that a defendant may not be compelled to provide handwriting exemplars. However, any voluntary writings by a defendant may be used. In this case the court found that the exemplars written for the police were voluntary.

Poole also challenged the admissibility of the handwriting expert who is not named. "To qualify as an expert, generally all that is required is that a person be knowledgeable in a particular matter; his special knowledge may be derived from experience as well as study, and formal education in the subject is not a requisite for expert status."

Defendant claimed the expert was not qualified because she failed a test to join American Board of Forensic Document Examiners and was only a trainee member of American Society of Forensic Document Examiners. However, she belonged to Southwestern Association of Forensic Document Examiners, had worked eight years for the Georgia Crime Lab, and had testified in court about 18 times. There was no abuse of discretion in permitting her to testify.

COMMENTARY: This case should be a salutary lesson to those who claim for themselves the very highest qualifications because of their associations as opposed to their inherent qualities. Logically, they are confessing that they themselves were knowingly and willfully working as unqualified experts until they amassed the documentation they now claim provides the only "recognized" qualifications, that is, they themselves only recognize their own qualifications and no one else's, even their own prior to their achieving their present august status.

From an Internet search, American Society of Forensic Document Examiners appears to be either an alternate name for, or a part of, American Society of Questioned Document Examiners.

## 2005

488. *Quay v Heritage Financial, Inc.*, 274 Ga. App. 358, 617 S.E.2d 618, 2005 Ga. App. LEXIS 754, 2005 Fulton County D. Rep. 2237 (Ga. App. 2005)

"Where a jury returns a verdict and it has the approval of the trial judge, the same must be affirmed on appeal if there is any evidence to support it as the jurors are the sole and exclusive judges of the weight and credit given the evidence. The appellate [\*12] court must construe the evidence with every inference and presumption in favor of upholding the verdict, and after judgment, the evidence must be construed to uphold the verdict even where the evidence is in conflict. As long as there is some evidence to support the verdict, the denial of defendant's motion for new trial will not be disturbed. Myer testified that he did not sign the New Account Application. Heritage's handwriting expert opined that 'Robert Myer did not prepare the question signatures on [the New Account Application] but that they were ..... prepared by James Quay,'

and Quay's handwriting expert acknowledged that Myer's signature had been forged. Both experts presented their findings and opinions to the jury, including demonstrative exhibits comparing the two signatures. In light of this testimony, we do not find that the jury's verdict was against the weight of the evidence."

COMMENTARY: I quote the passage at length as a reminder that it is easier to win at trial than on appeal.

## 2009

489. *Burke v State*, 2009 Ga. App. LEXIS 362, 2009 Fulton County D. Rep. 1276 (GA Ct. App. 2009)

A woman received correspondence and recognized the handwriting of defendant who was under a protective order not to contact her. The State called a forensics documents examiner from the Georgia Bureau of Investigation, who testified that the handwriting on the correspondence matched known samples of Burke's handwriting.

COMMENTARY: A case of routine admissibility.

## *2. Georgia Supreme Court.*

## 2003

490. *Reece v Smith*, 276 Ga. 404, 577 S.E.2d 583, 2003 Ga. LEXIS 165 (Ga. 2003)

A handwriting expert testified that a signature had been forged.

COMMENTARY: A case of routine admissibility.

## 2004

491. *Brown v Brown, et al.*, 277 Ga. 594, 592 S.E.2d 854, 2004 Ga. LEXIS 138, 2004 Fulton County D. Rep. 594 (Ga. 2004)

In a contest of the will of one Bobbie Brown, a handwriting expert testified that the purported signature of decedent on the will was forged.

COMMENTARY: A case of routine admissibility.

## 2009

492. *Bell v State*, 284 Ga. 790, 671 S.E.2d 815, 2009 Ga. LEXIS 23, 2009 Fulton County D. Rep. 163 (GA 2009)

"A handwriting expert testified that a personal check written on the victim's account with appellant as the payee was not written by the victim...."

COMMENTARY: A case of routine admissibility.

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493. *Phillips v State*, 285 Ga. 213, 2009 Ga. LEXIS 44, 2009 Fulton County D. Rep. 431 (Ga. 2009)

“Appellant asserts counsel was ineffective because he failed to seek a continuance when, three days before trial, he received from the State the letters purportedly written by appellant to the co-indictee. Appellant testified at trial that he was not the author of the letters in question. Appellant maintains trial counsel should have obtained a handwriting expert to establish that appellant did not write the letters. Trial counsel testified that appellant never denied before trial having written the letters and counsel did not believe the trial judge would grant [\*22] a continuance mid-trial. Even were we to assume deficient performance in counsel’s failure to seek a continuance, in light of the testimony of appellant’s handwriting expert at the hearing on the motion for new trial that he could not state with certainty that appellant did not write the letters, such assumed deficient performance created little actual prejudice to be considered in our assessment in Division 5(k), *infra*, of the collective prejudice stemming from all of trial counsel’s errors.”

COMMENTARY: Unfortunately, “could not state with certainty” does not tell us whether the expert needed to be definite or at a lesser level of assurance.

2012

494. *Wheeler v State*, 725 S.E.2d 580, 290 Ga. 817 (GA 2012)

“4. Wheeler claims that the trial court erred in admitting into evidence a letter purportedly written by Johnson in which she stated that Wheeler had threatened her life and that Wheeler should be investigated if ever she were found dead. Specifically, Wheeler contends that the letter could not be properly admitted into evidence because the handwriting expert who authenticated the letter could not show that a proper chain of custody had been established with respect to the document. Wheeler is incorrect. Because the letter constituted non-fungible physical evidence that could be recognized by observation, there was no need for the State to prove chain of custody with respect to it. *Mize v. State*, 269 Ga. 646, 651(5), 501 S.E.2d 219 (1998) (‘There is no need to prove chain of custody for non-fungible physical evidence identified by a witness, since these items can be recognized by observation.’) (citations omitted).”

COMMENTARY: “Fungible” means part or all of a substance can be replaced by a like amount and/or kind of the same substance. For example, tap water is fungible. If someone wants to fill a pitcher to take to the table but spills some of it on the way, other tap water can be added to the pitcher; one need not rescue what was spilled. However, documents are preferably given train of custody to protect them from alterations, deletions or additions once they become evidential. If something untoward does occur to them, the chain of custody will help determine when, where and by whom.

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## L. HAWAII CASES.

### 1. *Hawaii Courts of Appeal.*

#### 2004

495. *State v Meyer*, 2004 Haw. App. LEXIS 267 (Haw. App. 2004)

In a forged check case, handwriting expert Lloyd James Josey, Jr., testified that the owner of the account did not make out the check in question.

COMMENTARY: A case of routine admissibility.

#### 2005

496. *State v Kekahuna*, 2005 Haw. App. LEXIS 245 (Haw. App. 2005)

At page [\*8]: “A handwriting expert testified that Kekahuna’s failure to provide a compatible writing sample prevented her from determining whether Kekahuna wrote the front of the check.”

COMMENTARY: Presumably the expert was taking or asking for requested exemplars and the defendant did not cooperate. However, if we handwriting experts truly know handwriting, we do not need what is usually called comparable samples, such as exact same letters, letter-combinations, words or phrases to compare, and that only in precisely the same style. What use would anyone have of an expert in any endeavor if the expert can only perform in the most ideal circumstances? Anyone can have a better than fair stab at it in such circumstances.

#### 2008

497. *Lee and Brelow-Scott v Unciano, et al.*, 2008 Haw. App. LEXIS 338 (Haw. App. 2008)

The circuit court was within its discretion to find plaintiff’s handwriting expert, Reed Hayes, qualified to testify and credible in his opinion.

COMMENTARY: made a motion to strike Hayes’ testimony. There was no abuse of discretion in denying the motion. Hayes is a certified member of NADE.

### 2. *Hawaii Supreme Court.*

#### 2009

498. *Weinberg v Dickson-Weinberg*, 220 P. 3d 264 (HI Interm. Ct. App. 2009)

At page 269: “Attached to Husband’s memorandum was a report by Reed Hayes (Hayes), a handwriting-and-document examiner, in which Hayes opined that the AITD was not signed by Husband. Hayes also reported that he was unable to conclusively identify or eliminate Wife as the author of Husband’s signature on the AITD.

“On October 24 and 28, 2005, the parties litigated the issues surrounding the AITD. Husband and Wife, as well as one handwriting expert for each, testified. At a November 2, 2005 hearing, the family court orally denied Wife’s motion to enforce the AITD.”

AITD is short for “an agreement incident to divorce.”

COMMENTARY: Husband won on enforceability of the AITD and scant else, the remand granting most of what wife sought.

## 2000

499. *State v Webster*, 94 Haw. 241, 11 P.3d 466, 2000 Haw. LEXIS 351 (Haw. 2000)

The parties stipulated to a handwriting expert’s testimony that defendant had written certain notes.

COMMENTARY: A case of routine admissibility.

## M. ILLINOIS CASES.

### *1. Illinois Courts of Appeal.*

## 1993

500. *People v Wilson*, 626 NE 2d 1282, 254 Ill. App.3d 1020, 193 Ill.Dec. 731 (IL App. Ct. 1 Dist. 1993)

Eyeglasses were found at the scene of a murder. At page 1290: “The State introduced an invoice from Mueller Optical Company, signed by a ‘Joseph Wilson.’ Maureen Owens, a document examiner, testified that the signature on the invoice was in the defendant’s handwriting.” Defendant had used the name Joseph Wilson on previous occasions.

COMMENTARY: Her name is also given elsewhere as Maureen A. Casey-Owens. My *QDE Index* lists several journal papers by her, and they are worth the reading.

## 1994

501. *People v Caldwell*, 631 NE 2d 353, 259 Ill. App.3d 646, 197 Ill.Dec. 350 (IL App. Ct. 2 Dist. 1994)

At page 354: “John Gorajczyk, a document examiner from the Du Page County Crime Laboratory, testified that he compared the handwriting from the endorsement on the check with defendant’s handwriting exemplars. In Gorajczyk’s opinion, there was a high probability that defendant wrote Robert Turner’s name. Gorajczyk could not make a positive identification. Gorajczyk also believed that the person who wrote ‘Robert Turner’ on the back of the check also wrote ‘pay to the order of Jennifer Ocampo’ on the back of the check.”

COMMENTARY: A case of routine admissibility.

## 1996

502. *People v Accardi and Accardi*, 671 NE 2d 373, 284 Ill. App.3d 31, 219 Ill.Dec. 459 (IL App. Ct. 2 Dist. 1996)

Defendants’ conviction for possession of cannabis was reversed and remanded. They denied

having signed a consent to search form. Law enforcement agents involved all denied having forged the forms and some testified to seeing defendants sign the form.

At page 374: “Jean Brundage, a document examiner for the Illinois State Police, testified that Greg Accardi’s signature on the consent to search form was a forgery. The testimony of Steven Kane, an expert retained by the defense, was admitted by stipulation. Kane also concluded that Accardi’s signature on the form was forged.”

COMMENTARY: It kind of helps your case when you have the opposing expert on your side.

## 1998

503. *In re Estate of Tomasa Alfaro; Koble, et al., v Alfaro, et al.*, 703 N.E.2d 620, 301 Ill. App.3d 500, 234 Ill.Dec. 759 (App. Ct. IL 2 Dist. 1998)

At page 624: “Fred Dudink testified as a document examiner and handwriting analyst. After examining the paper, the watermarks, and the typewriting font, he did not find any alterations in the document. He concluded after comparisons with other exemplars that the signature of Alfaro compared favorably with the standards he used. He also concluded that the same person who wrote the initials ‘LC’ also wrote the name Lucy Copado. He would not testify, however, that the signature purporting to be that of Copado was actually that of Copado. On cross-examination, he stated he was prepared to testify that Copado’s signature was a ‘disguised writing.’

“The contestants’ counsel examined Diane Marsh, a forensic document examiner. After studying Copado’s writing habits and comparing Copado’s signature standards with the signature on the will, Marsh concluded that the signature attributed to her did not compare favorably with the signature on the will. She opined that someone attempted to duplicate Copado’s signature on the will.”

COMMENTARY: A case of routine admissibility.

## 1999

504. *Los Amigos Supermarket, Inc. v Metropolitan Bank and Trust Company, et al.*, 306 Ill. App. 3d 115, 713 N.E.2d 686, 1999 Ill. App. LEXIS 416, 239 Ill. Dec. 155 (Ill. App. 1999)

At page [\*10]: “The evidence deposition of Avina’s handwriting expert, James Hayes, was presented during the trial. In Hayes’ opinion, Avina did not sign either the Assignment or the \$ 2,300 lease. However, in Hayes’ opinion, those two documents had been signed by the same person.”

COMMENTARY: Some states have rules that permit use of an evidence deposition in lieu of a personal appearance by the witness. It is a tool to keep a personable and persuasive witness out of the jury’s sight.

505. *People v Kalwa*, 306 Ill. App. 3d 601, 714 N.E.2d 1023, 1999 Ill. App. LEXIS 485, 239 Ill. Dec. 726 (Ill. App. 1999).

“Jeanne Brundage, a handwriting and printing examiner for the Illinois State Police Crime Lab, testified that she compared various items with known handwriting samples of Rachel and defendant. In Brundage’s opinion, Rachel’s check found in Downers Grove and made out to

defendant for \$ 400 had a simulation of Rachel's handwriting for her endorsement, and defendant's actual signature as a second endorsement. The check made out to defendant for \$ 600 dated August 20, 1993, had a simulation of Rachel's signature, defendant's genuine signature and pictorial similarities to Rachel's [\*7] known writing as to the other entries. The other checks testified to by Myer also contained simulations of Rachel's signature."

COMMENTARY: A case of routine admissibility.

## 2000

506. *People v Spiezer*, 316 IL Ap3 75, 249 IL Dec 192, 735 NE2 1016, 2000 Ill. App. LEXIS 694 (2 Dist 2000)

Defense attorney did not have to disclose report of handwriting expert he consulted but did not call as trial witness. Contempt of court was reversed.

COMMENTARY: One can reasonably argue that the entire episode was based on everyone's belief that the expertise was reliable and the opinion credible evidence.

## 2002

507. *In re Estate of Ann L. Cuneo; Mowinski v Stout, et al.*, 780 NE 2d 325 (IL App. Ct. 2 Dist. 2002)

Darlene Hennessy, a questioned documents examiner, testified that, having compared three of decedent's known signatures from her will to those on deeds that were in dispute, decedent's signatures on the deeds could not be identified, and this to a reasonable degree of certainty. Objections to this on appeal were rejected since the court could reasonably have relied on the opinion.

COMMENTARY: Every handwriting expert who reads this is wondering, "But why could decedent not be identified as the writer? Three exemplars are insufficient? Poorly copied materials? Hennessy faced a difficulty she could not resolve? She had been rushed or put into impossible circumstances for good work?" And other possibilities, while on the face of it, it seems that everyone took it to mean that decedent had not written the signatures. Thus, this may be a routine case of cross-examiner incompetence.

## 2003

508. *People v Soto*, reversing and remanding murder conviction, 2002 IL App LEXIS 1066 (IL Ap 2002); vacated, reversing and remanding murder conviction, 336 IL Ap3 238, 783 NE2 82, 270 IL Dec 507, 2003 IL App LEXIS 44 (IL Ap 2003); order to vacate opinion and reconsider in light of *People v Ceja* [204 IL2 332, 273 IL Dec 796, 789 NE2 1228 (IL 2003)] 204 IL2 679, 789 NE2 301, 273 IL Dec 401 (IL 2003); vacated, substitute opinion, affirming murder conviction, 342 IL Ap3 1005, 796 NE2 690, 2003 IL App LEXIS 1111, 277 IL Dec 604 (IL Ap 2003)

This discussion refers to 2003 IL App LEXIS 44 on an issue not mentioned in opinion given at 2003 IL App LEXIS 1111. The latter ruled all errors were harmless since evidence of guilt was overwhelming and that the handprinting issue was a very minor issue at that.

Defendant refused to provide exemplars for comparison to handprinted documents and contended on appeal that admitting that refusal as consciousness of guilt was error. The basis for the contention was not constitutional, but that such comparison was “not generally accepted in the relevant scientific community.” If the issue were to arise on retrial after the reversal and remand of murder conviction, a ruling on admissibility under *Frye* would have to be made before defendant could be ordered to make exemplars.

COMMENTARY: There seems to be an increase of inability among document examiners to compare handprinting, particularly comparing handprinting to cursive handwriting. This fits with a decrease in knowledge about the physiology of handwriting and of the graphic motor sequence, along with an increase in comparison by formation, where only the same letters written in the same style can be compared. It may well be that those of us, who have scientific knowledge of handwriting and of its production, will eventually be on the short end of a general acceptance test. It is, I think, easier to be contentedly limited in knowledge and ability than not. However, the competent, studious and industrious examiner should still be able to pass muster under either *Frye* or *Daubert*.

509. *Estate of Genevieve Bontkowski, Disabled Person, et al., v Bontkowski, et al.*, 337 Ill. App. 3d 72, 785 N.E.2d 126, 2003 Ill. App. LEXIS 95, 271 Ill. Dec. 475 (Ill. App. 2003)

“In the present case, [Diane] Marsh, the Estate’s handwriting expert and a disinterested witness, testified that the signatures on the Mason deed were not Genevieve’s. Calcagno argues that the Estate failed to prove by clear and convincing evidence that the deed was forged because on cross-examination Marsh admitted that it was possible that the ‘G’ [\*8] in the signatures could have been Genevieve’s. Marsh further stated, however, that it was not probable that the ‘G’ was Genevieve’s because it was different from her habit formation. [James L.] Hayes, Calcagno’s expert, did not contradict Marsh, stating that it was possible that the Mason signatures were forged. Lewandowski, the notary used to acknowledge Genevieve’s signatures on the deeds, offered nothing to validate the Mason signatures. She admitted that the deed was not signed in her presence, she had never met Genevieve, and she had no idea what her signature looked like.

“The circuit court’s finding that the signatures on the Mason deed were forged was not against the manifest weight of the evidence.”

COMMENTARY: Hayes had said that the signature on the Mason Deed could be proven neither authentic nor false. Presumably the case was one where reasonable experts could honestly disagree, but where Marsh gave more cogent reasons while other evidence better meshed with her opinion. In such cases it is no shame to either expert that the court should find one opinion more persuasive than the other. That is precisely the reason we have trials by impartial judges and jurors, a fact the anti-expert experts apparently misunderstand since they declare judgments in keeping with their opinions as being impeccably correct and any contrary as being ambiguous at best and inexcusably flawed at worst.

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## 2004

510. *Dowd and Dowd, Ltd. v Gleason, et al.*, 816 NE 2d 754, 352 Ill. App.3d 365, 287 Ill.Dec. 787 (IL App. Ct. 1st Dist. 2004)

James Hayes, a forensic document examiner, testified for Dowd that certain tax forms had been signed by certain individuals and had also been altered. The trial judge could not determine whether the forms had been filed, while other issues were not properly before the court.

COMMENTARY: It seems that Hayes had done a commendable job examining the documents, so it is a shame it ended up without relevance.

## 2005

511. *People v Sterling*, 828 NE 2d 1264, 357 Ill. App.3d 235, 293 Ill.Dec. 766 (IL App. Ct. 1 Dist. 2005)

At page 1271, Jean Brundage, a questioned document examiner with the Illinois State Police crime lab, testified that defendant wrote the endorsement on the back of a money order that was connected with the murder for which he was later convicted.

COMMENTARY: A case of routine admissibility.

## 2006

512. *Hoxha v LaSalle Nat. Bank, et al.*, 847 NE 2d 725, 365 Ill. App.3d 80, 301 Ill.Dec. 715, (IL App. Ct. 1 Dist. 2006)

Diane Marsh, a forensic document examiner, identified decedent's signature on a document, but because of other factors it was not a contractual agreement.

COMMENTARY: A case of routine admissibility.

## 2009

513. *Gambino, et al., v Boulevard Mortg. Corp., et al.*, 922 NE 2d 380 (IL App. Ct. 1st Dist. 2009)

Diana Marsh testified as a document examiner for plaintiff Gambino. She determined that more than 39 purported signatures were not written by Gambino. At page 407: "The trial court also found the expert testimony of Marsh 'extremely credible, thoroughly articulated, and well-supported.' The trial court found that defendants offered no evidence to refute this testimony."

The judgment of the circuit court was affirmed in its entirety.

COMMENTARY: The description of Marsh's testimony indicates a very professional performance.

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514. *Cunningham v Schaefflein*, No. 1-12-0529. (IL App. Ct. 1st Dist. 2012)

“¶ 12 The objectors presented Lisa Hanson, a certified forensic document examiner, as an expert witness. Hanson reviewed the petitions circulated by Leslie and Weed and opined that many of the signatures submitted by Weed and Leslie bore characteristics of common authorship. Among the 84 signatures Hanson identified during her testimony, she found several common authors.”

COMMENTARY: Due to more serious issues, Hanson’s evidence did not have to carry the day. Cunningham’s name was ordered not to appear on the ballot.

515. *Kruzek v Estate of Kruzek*, 2012 IL App (1st) 121239-U (IL App. 2012)

Plaintiff was entirely disinherited by his mother’s second will in favor of his brother. He offered Tamara Kaiden as an expert witness, for the unstated but apparent purpose of providing evidence the mother’s signature on the second will was false. The trial court ruled Kaiden to be unqualified to testify. There were two major concerns expressed by the trial court, that Kaiden never stated specific data about her training nor ever described any hands-on training.

“¶ 37 We disagree with Steven’s argument that the circuit court improperly diminished the value of Ms. Kaiden’s distance learning and her document reviews and improperly equated hands-on training with in-person training. The circuit court made clear it was not finding Ms. Kaiden unqualified as an expert in forensic document examination due to her distance learning and lack of in-person training, but rather that it was finding her unqualified as an expert due to the lack of evidence regarding the *details* of said learning and training. The court also made clear it was finding Ms. Kaiden unqualified to testify as an expert witness in forensic document examination because no evidence was presented as to the *contents* of the documents she allegedly had reviewed during the 200-plus handwriting cases for which she has consulted. As discussed above, the circuit court committed no clear abuse of discretion in so finding.” [Emphases in original.]

Steven’s motion for reconsideration was properly denied since everything he offered could have been presented prior to the decision to disqualify Kaiden. Additionally, the trial court credited the two witnesses to decedent’s signature on the second will. So even if Kaiden’s assumed evidence of forgery had been heard, it would have been rejected in favor of the credible eye-witness testimony.

COMMENTARY: Someone brought this case to my attention with expression of great concern for implications regarding Koppenhaver’s and Baier’s training of Kaiden. However, the appeal decision clearly states the value of that training is not discounted, only that there was lack of testimony by Kaiden as to its contents and nature, such as whether there was hands-on training. The entire difficulty regarding Kaiden might well be derived from the attorney’s inadequate questioning. Equally so, the attorney might have experienced an unsatisfactory response pre-trial to enquiries in that regard. We must make our best assessment of case reports, but there remains so much we can only address by surmise and inference. It is imperative to recognize surmise and inference by ourselves or any others for what they are.

## *2. Illinois Supreme Court.*

### 1997

516. *People v Woolley*, 687 NE 2d 979, 178 Ill.2d 175, 227 Ill.Dec. 497 (IL 1997)

“Tomsha and the defendant both submitted handwriting samples. FBI Document Examiner John Sardone, a handwriting expert, testified that the defendant’s samples were written in a deliberate manner and did not contain his naturally occurring handwriting. 985\*985 Because of the deliberate nature of the defendant’s samples, Sardone could not positively identify the defendant as the author of the written statements turned over to the authorities by Tomsha. Sardone was able to conclude that all of these documents were written by the same person, and that they were not written by Tomsha. Sardone also concluded that the signatures on the documents matched the defendant’s signature in the known samples.”

COMMENTARY: The rule is that giving false handwriting exemplars can be taken as indicating consciousness of guilt. The defense attorney should consider several factors, among which are:

- a) The individual might truly write that way, which is not uncommon due to various factors;
- b) The individual might have been instructed to write in a false manner, such as change one’s slant to the left because the questioned writing was left-slanted;
- c) The person ordered to write naturally might become so nervous about obeying orders that severe tension causes what is natural when severely tense versus normally relaxed; and
- d) The text, pen, paper, table, chair or other circumstances are uncomfortable for the writer.

### 1998

517. *People v Kliner*, 705 N.E.2d 850, 185 Ill.2d 81, 235 Ill.Dec. 667 (IL 1998)

Maureen Casey-Owens identified defendant as the writer of two documents.

COMMENTARY: A case of routine admissibility. Ms. Casey-Owens has authored some fine materials.

## N. INDIANA CASES.

### *1. Indiana Trial Courts.*

### 2012

518. *Gill v Gill*, Cause No. 32D03-1012-CT-3 and 32D03-0905-DR-62, Decision (Hendricks County Superior Court, IN, Sept. 11, 2012)

Issue was whether plaintiff husband had signed several documents in the underlying divorce that gave all community property to the wife. James Steffen was wife’s handwriting expert. The sole statement in the decision concerning expert evidence was paragraph 20: “Court finds that James Steffen was not a credible witness.”

COMMENTARY: In his deposition, Steffen stated he retired from the Secret Service but had not worked in their forensic services. He had taken the two-week survey course given to investigators so they would know what services the qualified document examiners could provide to them. Most document examiners claiming training by the Secret Service probably took this same course which the Secret Service has officially stated does not qualify one to act as a document examiner. So make an examiner claiming a training by the Secret Service to prove it was a standard training course of two years or more versus a two-week survey course.

## *2. Indiana Courts of Appeal.*

### 2001

519. *Bedree v Bedree, et al.*, 747 N.E.2d 1192, 2001 Ind. App. LEXIS 889 (Ind. App. 2001)

At page [\*3]: “A bench trial was held on October 6, 2000. An expert for the Estate testified that, based upon his comparison of the two deeds in question with eight documents which by stipulation bore the authentic signature of Emily, the signatures on the deeds were forgeries.”

COMMENTARY: That is the entire discussion of the handwriting expert testimony.

### 2003

520. *Garcia v Garcia*, 789 N.E.2d 993, 2003 Ind. App. LEXIS 961 (Ind. App. 2003)

At page [\*9]: “Here, the evidence regarding the validity of the receipt was conflicting. While Father’s handwriting expert testified that in his opinion the signature on the receipt was Mother’s, he could not testify to the authenticity of the receipt itself because it was a photocopy. Mother testified that she did not execute the receipt and that she did not have access to a computer or typewriter to provide the typewritten receipt to Father in 1996. Further, Mother’s expert testified that the signature on the receipt was not Mother’s.”

COMMENTARY: Father’s expert showed proper understanding of the rule in examining photocopies: Whereas the unseen original cannot be authenticated by document examination, it can be proven false, even definitely so. Mother prevailed, and Father had to pay back child support with interest.

### 2005

521. *Dickenson v State*, 835 N.E.2d 542, 2005 Ind. App. LEXIS 1928 (Ind. App. 2005)

A handwriting expert could not be sure which of two persons signed a letter, but favored one over the other.

COMMENTARY: A case of routine admissibility.

### 2008

522. *Prime Mortgage USA, Inc., et al., v Nichols*, No. 49A04-0610-CV-586 (IN App. 2008)

Nichols was plaintiff at trial. “The Defendants further claimed that Nichols had authorized

such a transaction pursuant to a Share Authorization Document (the 'SA Document'), which they claimed Nichols had signed. On April 23, 2003, Nichols filed her amended complaint, adding a claim of breach of fiduciary duty and alleging that Law improperly induced Nichols to sign the SA Document. On April 7, 2005, the trial court granted Nichols permission to file her Third Amended Complaint, in which Nichols deleted the allegation that Law induced her to sign the SA Document and instead claimed that Law forged her signature on the SA Document. Nichols had discovered this forgery by comparing another corporate document, signed in 1993, in which she and Law had amended Prime's Articles of Incorporation (the 'Written Consent'). The signature blocks on the Written Consent and the SA Document were identical, leading Nichols to believe that Law had affixed the signature block from the Written Consent and electronically pasted it onto the SA Document. Clarke Mercer, a forensic document analyst, testified that there was 'no doubt' that the SA Document was a forgery."

COMMENTARY: This procedure for creating a false document is called "cut-and-paste," from the old days where one would use a pair of scissors and a paste pot, which provide the images for the computer icons one is to click to do the same thing electronically.

## 2010

523. *In re Matter of Compton; Compton, et al., v First National Bank of Monterey, et al.*, 919 NE 2d 1181 ( IN Ct. App. 2010)

At page 1184: "8. Sharon Rose Hampton testified that from her examination of the purported contracts, including the notarized addendum, the purported signatures of the decedent were in fact written by Scott W. Compton; however, Debbie L. Moriarity, a notary public, testified that she followed protocol and established that the person signing the addendum was identified by hospital records and a wrist band as the decedent, who understood what he was doing."

COMMENTARY: The Case Summary at pages 1182-1183 states that prior to this case Indiana had enacted a new law ending the common law of presumption of undue influence if three provisions were met:

- a) the principal acted voluntarily,
- b) the power of attorney was not used, and
- c) the attorney in fact benefitted.

In a case of first impression it was ruled by the trial judge that all three provisions had been met and thus one son's otherwise inheritance was given over to another son and his wife. This was affirmed. Meanwhile, handwriting experts must still call them as the available physical evidence of handwriting best indicates, knowing so much else in the case is beyond their control or even their legitimate consideration.

Ms. Hampton is a member of NADE.

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## O. IOWA CASES.

### 1. Iowa Courts of Appeal.

#### 2001

524. *State v Crawley*, 633 N.W.2d 802, 2001 Iowa Sup. LEXIS 160 (Iowa 2001); post-conviction relief denied, *Crawley v State*, 2007 Iowa App. LEXIS 203 (Iowa App. 2007)

#### 2001 Iowa Sup.

A handwriting expert testified that Crawley disguised his handwriting exemplars. He was convicted of forgery. The claim of ineffective assistance of counsel because of failure to consult a handwriting expert was reserved for a post conviction review.

#### 2007 Iowa App.

At a post conviction review, the trial court found no ineffective assistance of counsel for failure to consult a handwriting expert and other related issues. Denial of relief was affirmed.

COMMENTARY: Since deliberate disguise of exemplars is basis for an inference of consciousness of guilt, it is a proper subject of expert testimony.

525. *State v House*, 2001 Iowa App. LEXIS 107 (Iowa App. 2001)

The State's handwriting expert, Officer Greg Engel, testified that defendant wrote an incriminating letter. When during cross-examination and later in argument defense counsel suggested Engel's testimony was unreliable because he worked for the prosecution, it was proper for the prosecutor to bring out on redirect and in rebuttal argument that the letter had been sent to a defense expert who did not testify.

COMMENTARY: This was a case of throwing rocks inside one's own glass house.

#### 2009

526. *Oehlert and Oehlert v Campbell*, 2009 Iowa App. LEXIS 709 (Iowa App. 2009)

Campbell denied signing a promissory note and presented testimony of his handwriting expert, Dr. Joe Alexander, that he had not. However, due to other evidence, such as Campbell's check to plaintiffs for the payment due under the note, the trial court found plaintiffs more credible. Campbell had stopped payment on the check, so the amount was awarded to plaintiffs. The fact-finder is not bound by handwriting expert testimony, for which case citations are given.

COMMENTARY: A case of routine admissibility.

### 2. Iowa Supreme Court.

#### 2000

527. *State v Barnholtz, et al.*, 613 N.W.2d 218, 2000 Iowa Sup. LEXIS 129 (Iowa 2000)

At page [\*16]: "The State's handwriting expert testified that in his opinion the signature of 'Randy Gray' was *probably* made by Bonnie Barnholtz. The expert admitted that 'probable'

means room for doubt because ‘irreconcilable differences are present.’ Given this weak testimony, it is not surprising that the jury found Bonnie not guilty.”

COMMENTARY: If there are irreconcilable significant differences present, the finding must be an elimination of the suspected writer, as Ordway Hilton and other major authors have taught.

## P. KANSAS CASES.

### *1. Kansas Supreme Court.*

#### 2007

528. *In the Matter of the Adoption of X.J.A.*, a minor child born 12-21-2003, 36 Kan. App. 2d 621, 142 P.3d 327, 2006 Kan. App. LEXIS 919; reversed, 284 Kan. 853, 166 P.3d 396, 2007 Kan. LEXIS 486

Adoptive parents offered expert testimony of Barbara Downer that the birth mother had signed a consent form to the adoption. The trial court found a voluntary consent, the Court of Appeals reversed, and the Supreme Court reversed once more, upholding the trial court’s ruling in favor of the adoptive parents.

COMMENTARY: This is a case of routine admissibility. Ms. Downer was president of National Association of Document Examiners from 2005 to 2009.

## Q. KENTUCKY CASES.

### *1. Kentucky Courts of Appeal.*

#### 1998

529. *Sroka-Calvert v Watkins et al.*, 971 S.W.2d 823 (Ct App. Ken.L.R. 1998)

An expert testified the questioned signature was not genuine but “that these signatures matched other purported signatures....” S. A. Slyter was the expert.

COMMENTARY: A case of routine admissibility. Mr. Slyter is a member of AFDE and certified by BFDE.

#### 2007

530. *Richardson, et al., v Head, et al.*, 236 S.W.3d 17, 2007 Ky. App. LEXIS 145 (Ky. App. 2007)

“Numerous witnesses were called by the Appellees [Defendants], each testifying that Edward’s ability to speak or write was either greatly impaired or non-existent on or before October 3, 2002, the date he purportedly signed the codicil. The Appellees’ handwriting expert, Steve Slyter, testified he did not believe either the signature on the will or codicil was authentic, having been ‘traced.’ Dennis Flickinger (Flickinger), an occupational therapist who visited with Edward for several months before and subsequently after October 3, 2002, testified Edward had

great difficulty in communicating orally or in writing. He further testified as of October 3, 2002, Edward could not grip a pen in order to write.

“Witnesses on behalf of the Appellants gave an opposing opinion [\*4] that, not only did Edward know what he was doing, he was able to communicate orally and he was also able to write as late as January 2003.... Clarke Mercer, the Appellants’ handwriting expert, testified Edward signed both documents.”

Appellants’ motion for new trial on basis Flickinger had committed perjury was denied by the trial judge, and the denial was upheld on appeal. The evidence of alleged perjury, which was a video of decedent a month before the will and codicil were signed, had been available before trial. The appeal court said it supported his inability to have written his signature as claimed.

COMMENTARY: This case underlines the value of advice from Ordway Hilton and others for the handwriting expert in such cases to obtain and study medical records for their data regarding ability to write. Since medical notations are a specialty, it is prudent to consult with an RN or doctor or other qualified medical professional.

Mercer is diplomate with ABFDE, and Slyter is a member of AFDE.

## 2009

531. *Lester v Commonwealth*, 2009 Ky. App. Unpub. LEXIS 343

Lorie Gottesman, a forensic document examiner with the FBI, testified on direct examination that she felt strongly that defendant had not written an apology letter. She depended on comparison of several individual letters, but said other letters indicated otherwise. However, she could not eliminate him as the writer since his writing showed a higher skill than the apology letter and he may have “come down” in writing skill. Gottesman said that her analysis was peer-reviewed by a colleague and that her results were independently verified.

Defense attorney did not consult a handwriting expert, and that with other errors required vacating the conviction and remanding for a new trial.

COMMENTARY: Using comparison of individual letters one can almost always prove anyone did or did not write anything. Testifying that some other expert agrees with one’s opinion is called bolstering and should be objected to strenuously. The reviewing expert is not available for cross-examination but has had his “testimony” presented to the jury while his very existence, much less his testimonial voice, has not been verified by the fact-finder, only asserted by the self-interested bolstering of the live witness.

## 2010

532. *Amos and Sibley, v Clubb, et al.*, No. 2009-CA-001544-MR., Court of Appeals of Kentucky (December 10, 2010)

Steven Slyter’s video deposition regarding a traced signature was admissible in jury trial.

COMMENTARY: A case of routine admissibility with the addition of acceptance of expert testimony regarding tracing.



## 2. Kentucky Supreme Court.

### 2003

533. *Florence v Commonwealth*, 120 S.W.3d 699, 2003 Ky. LEXIS 182 (KY 2003); rehearing denied by *Florence v. Commonwealth*, 2003 Ky. LEXIS 294 (Ky. 2003)

Chris White testified as handwriting expert for the Commonwealth. On appeal defendant said Trial Court did not hold a *Daubert* hearing. In Kentucky, once appellate courts hold reliability has been satisfied, trial courts can take judicial notice of it. However, a trial court could still hold a *Daubert* hearing if it believes that would be helpful or if it had doubts regarding the particular expert's testimony. Florence had not raised a specific issue about reliability while the Trial Court had taken judicial notice of the reliability of handwriting analysis, and so there was no abuse of discretion. What disturbed the Supreme Court was White's testimony that handwriting analysis was "more precise than DNA evidence, thus, in effect, testifying in favor of his own testimony." However, there had been no objection at the time, so the issue was not preserved for appeal.

COMMENTARY: At least Kentucky is sensible about the whole thing. The expertise itself can be subject to judicial notice, but a party can challenge a specific expert's testimony if there are grounds for doubting such expert's reliability. It seems there were ample grounds to challenge White's reliability that defense counsel seems not to have been cognizant of.

## R. LOUISIANA CASES.

### 1. Louisiana Courts of Appeal.

### 1994

534. *Hamilton v Kelley*, 641 So. 2d 981 (LA Ct. App. 2 Cir. 1994)

At page 985: "Robert Foley, a forensic document examiner, did not testify because the parties stipulated that he would testify in accordance with his written report and addendum. Foley, who holds master's degrees in chemistry and criminal justice, as well as a juris doctor degree in law, is widely recognized as a questioned document examiner. Foley concluded, from known samples, that W. H. Hamilton was the writer of the testament (minus the signature) at issue."

COMMENTARY: A case of routine admissibility.

### 1996

535. *Cagnolatti v Hightower*, 692 So. 2d 1104 (LA Ct. App. 4 Cir. 1996)

Robert Foley testified that a recorded pulse rate of 88 had been altered from 58. A doctor and nurse testified their medical record correctly recorded a pulse rate of 88. "However, the handwriting expert's qualifications were most impressive, and his analysis persuasive, and the jury reasonably could, and presumably did, resolve this credibility issue against nurse Nixon and Dr. Hightower."

COMMENTARY: A case of routine admissibility.

536. *In the Matter of the Succession of William Calhoun and His Wife, Bertha Calhoun*, 674 So.2d 989 (LA Ct. App. 2 Cir. 1996)

At page 990: "Robert Foley, a forensic document examiner, was furnished six known examples of Mrs. Calhoun's handwriting which he compared with the handwriting inside the Bible. Foley concluded that the entire testament was written, dated, and signed by Bertha Calhoun. His opinion was premised upon the legitimacy of the samples furnished."

COMMENTARY: A case of routine admissibility.

537. *State v Hattaway*, 674 So. 2d 380 (LA Ct. App. 2nd Cir. 1996)

Hattaway urged error in the testimony of document examiner Robert Foley, because the state failed to lay the proper foundation for the documents he addressed. There was no reversible error since another witness had laid the foundation.

COMMENTARY: There was no challenge to Foley himself.

538. *State v Smith*, 679 So.2d 193 (LA Ct App. 4 Cir 1996)

Defendant gave a sob story to induce a man to co-endorse check when cashing was refused due to lack of ID. It bounced, and true owner denied the endorsement. James Dupuis of New Orleans P.D. compared signature with handwriting exemplars obtained from defendant and said she did it. Problem was that the original check was not available and "photostatic copy" was used. Did they mean photocopy or print from microfiche? Duplicate may not be admitted if "(1) A genuine question is raised as to the authenticity of the original; (2) In the circumstances it would be unfair to admit the duplicate in lieu of the original; or (3) The original is a testament offered for probate, a contract on which the claim or defense is based, or is otherwise closely related to a controlling issue." Then are given five rules for permitting "other evidence of contents."

COMMENTARY: There was no need to prove contents but to prove identification of the writer beyond a reasonable doubt. Defense argued the wrong side of the issue regarding the duplicate's admissibility. However, defendant was positively identified as passer of the check, so handwriting evidence was frosting on the State's case.

## 1999

539. *Bailey v Descendants of Fowler*, 746 So. 2d 130 (LA Ct. App. 3 Cir. 1999)

Robert G. Foley, a Forensic Document Examiner, determined that an alleged ancient plat, which is a map of a property with its boundaries and other characteristics, had been fabricated. Fowler had presented it in support of his claim to a portion of Bailey's property.

COMMENTARY: A case of routine admissibility.

540. *Scoggins v Frederick and related cases*, 744 So. 2d 676, 1999 La. App. LEXIS 2706 (La. App. 1999)

At page [\*27]: "J. Robert Murray, Jr., was qualified as an expert on forensic handwriting examination. He testified that he examined 'standards' to determine if the signatures on the counterletter were authentic. The standards provided to him were the two men's signatures on

other documents. The witness went into detail about the methods he used to compare the admitted signatures with the questioned signatures.” He said both men’s signatures were authentic.

COMMENTARY: A case of routine admissibility.

## 2000

541. *Succession of Vincent Lovoi*, 777 S2 627, 2000 LA Ap LEXIS 3443 (LA Ap 2000)

Claimants produced an olographic will that gave nothing to their sister, who presented testimony of handwriting expert Mary Ann Sherry. Sherry said two different people wrote the will and the exemplars supplied to her. The Trial Court ordered the will probated because, among other reasons, it was not shown whether or not the exemplars were written by decedent.

COMMENTARY: The handwriting expert is at the mercy, as it were, of one’s own client. It is rudimentary that the client and client’s attorney clearly prove the exemplars to be genuine writings of the one who purportedly made them. It is in part self-protection for the expert to bring to the client’s attention all that must be proved as foundation for the expert opinion. Ms. Sherry is a member of NADE.

542. *State v James*, 754 S2 429, 2000 LA App LEXIS 577 (LA Ap 2000)

Defendant’s conviction for armed robbery was affirmed. He had made out an application for a loan at the financial firm he robbed. Robert Foley testified that the same person signed the loan application as signed defendant’s exemplars.

COMMENTARY: A case of routine admissibility.

543. *State v Womack-Grey*, 764 So. 2d 108, 2000 La. App. LEXIS 1443 (La. App. 2000)

After a handwriting expert testified about a certain letter, the defense stipulated that defendant had written it. It was her protestations of love for a man who, she said, destroyed her, that she would not betray him to the police though he would betray her.

COMMENTARY: The lady’s broken heart received some succor, because her conviction was overturned on basis the State brought in unrelated criminal acts by her.

## 2001

544. *State v Sumling*, 786 So. 2d 843, 2001 La. App. LEXIS 838 (La. App. 2001)

Originally Sumling had a co-defendant, Johnson: “Handwriting exemplars [\*6] were obtained from both defendant and Johnson. Detective Keith Bourque, a handwriting expert with the Jefferson Parish Sheriff’s Office, testified that Johnson’s writing did not match the signatures on the checks he was alleged to have forged. Because of that finding, charges against Johnson were subsequently dropped.”

For Sumling, testimony from the same expert contributed to having his conviction reversed: “No eyewitnesses testified to having seen defendant take the check from Ms. Pontiff’s office. There was no testimony that anyone saw defendant fill [Pg 11] out the check. Most importantly, there was no expert testimony to show that defendant’s handwriting matched the handwriting on

the forged check.

“Detective Cunningham testified he obtained a handwriting sample from defendant and turned it over to the district attorney’s office, but did not know what happened to the sample after that. Detective Bourque, the handwriting expert called as a defense witness at trial, testified that he received only a photocopy of defendant’s handwriting exemplar. He could not use the copy to do a handwriting comparison. He requires an original sample in order to study the pen lifts and pressure. Thus, there was no testimony to show that defendant’s handwriting is consistent with the signature on the check.”

COMMENTARY: Bourque was correct that a copy would not permit him to make a positive identification. A copy may, however, show enough significant differences that cannot be credited to the copying process and thus may be positive proof of elimination.

### 2003

545. *State v Matthews*, 814 So. 2d 619, 2002 La. App. LEXIS 1409 (LA App 2002); remand, 855 So. 2d 740; affirming conviction, 859 So. 2d 863, 2003 LA App LEXIS 3034 (LA Ct Ap 2003); rehearing denied, 2003 La. App. LEXIS 3504; reinstated on rehearing, 2004 La. LEXIS 478 (LA 2004)

#### 2002 La. App. 1409:

Defendant was convicted of both forging a check and uttering the same forged check. Double jeopardy prevented conviction for both, so he chose to have the uttering dismissed and be sentenced on the act of forging. The Court of Appeal said there was insufficient evidence to convict on the act of forging while the other count was dismissed, so he could go free. The dissenting opinion observed that defendant had decided which count to dismiss and which to be sentenced on, so the trial judge should decide which count of forgery the evidence supported. The Louisiana Supreme Court remanded the case, and the decision at 859 So. 2d 863 resulted. 859 So. 2d 863:

In forgery conviction, defendant was convicted at trial and appealed. “The Court of Appeals, 814 So. 2d 619, vacated conviction and sentence. Certiorari was granted. The Louisiana Supreme Court, 855 So. 2d 740, remanded.” On remand, the Court of Appeals, 859 So. 2d 863, affirmed conviction, ruling among other things that “witness was properly permitted to testify as expert on field of handwriting analysis.” At 871-872: “Defendant contends the trial court erred in qualifying Officer Chana Pichon as an expert in handwriting analysis. Defendant argued that handwriting analysis failed to meet the criteria set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*...” Louisiana Supreme Court adopted *Daubert* for determining reliability of scientific evidence in *State v Forest*, 628 So.2d 1113 (LA 1993). The Trial Judge was fully satisfied the criteria had been met, and the Court of Appeals cites *U.S. v Velasquez* as authority on the matter. As to defendant’s exemplars, there had been no plain error in admitting them.

COMMENTARY: At page 873 the report gives a quote from the Trial Judge expressing his satisfaction with the admissibility of the handwriting evidence. In paraphrase, he says it is a field of expertise, people have individual styles, and the evidence is not general knowledge and thus helpful to the jury. One can infer that Pichon did a good job of answering the challenges offered by each *Daubert* criterion.

## 2004

546. *Fleet Fuel, Inc., v Mynex, Inc., and Singleton*, 877 S2 234, 2004 LA Ap LEXIS 1572 (LA Ap 2004)

Robert G. Foley, plaintiff's handwriting expert, concluded one of two questioned signatures on the same document was genuine and the other false.

COMMENTARY: A case of routine admissibility.

## 2005

547. *Joyner v Liprie*, 896 So. 2d 363, 2005 La. App. LEXIS 604 (La. App. 2005)

A key faxed document allegedly sent by Liprie was denied by him. His document examiner demonstrated by means of an overlay that the signature was exactly the same as that on a previous letter from Liprie. The Court of Appeals states that it not only verified this but noted the overlay did not so precisely fit signatures on other unquestioned documents. Joyner had not even referenced the questioned fax until late in the proceedings. Nevertheless, the trial court found the questioned fax to be authentic and expressive of the true intent of the parties. At page [\*9] the Court of Appeals states: "The trial court has great discretion in this situation and there is sufficient evidence to support the trial court's credibility determination, which was that the document dated June 22, 1993, was authentic and the truest representation of the agreement between the parties. Thus, even if we disagree, we cannot say that the court's ruling on this issue is manifestly erroneous."

COMMENTARY: This case report leaves one in wonder that a manifestly erroneous finding of fact, the true fact having been verified by the Court of Appeals, could be found to be not manifestly erroneous. It also demonstrates why the finding of fact in a case cannot always be used in itself as evidence whether or not the testifying document examiner is competent.

## 2007

548. *State v Franklin*, 956 So.2d 823 (LA Ct. App. 2 Cir. 2007)

At page 825: "Our review of the record reveals sufficient evidence that Defendant was guilty of both counts of forgery by placing signatures on two savings withdrawal slips without authority and with the intent to defraud. Not only did the State present an expert in handwriting analysis who testified that the withdrawal slips were written in Defendant's handwriting, but Defendant herself admitted signing both account holders' signatures on the withdrawal slips. The account holders testified that they never authorized Defendant to write their signatures on the savings withdrawal slips."

COMMENTARY: A case of routine admissibility.

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## 2008

549. *Succession of Joseph W. Merrick, Sr.*, 989 So. 2d 194, 2008 La. App. LEXIS 1018 (La. App. 2008)

At page [\*8]: “Appellants called a hand writing expert to testify as to the authenticity of their father’s signature on the will. In the expert’s opinion, Mr. Merrick did not sign the will. Appellants argue that the expert’s opinion should have been accepted by the trial court, especially in light of the fact that Mr. Fisher did not offer any expert testimony to refute their expert’s opinion.

“Mr. Fisher points out that the expert hired by appellants was not aware that Mr. Merrick signed four sets of the will, each set consisting of three pages. The expert admitted on cross-examination that it would have been beneficial for her to have examined all of the documents, and to know the order in which he signed, noting that a person of Mr. Merrick’s age would have tired, thus affecting his signature.”

COMMENTARY: The best way to sabotage one’s own expert witness is to withhold pertinent evidence.

## 2012

550. *In re Succession of Barattini*, No. 11-CA-752. (LA Ct. App. 5 Cir. 2012)

“Mary Ann Sherry, a board certified document examiner, examined decedent’s current will, his previous wills and some East Jefferson Hospital releases he signed earlier in 2006. In her opinion, the signature on the November 9, 2006 will was not the same as the other signatures, known to be William Barattini’s signatures, which she examined.” The order to probate an earlier will due to forgery was affirmed.

COMMENTARY: Sherry’s certification is through NADE.

551. *In re Succession of Chiasson*, No. 11-1421 consolidated with 11-1422, 11-1423. (LA Ct. App. 3rd Cir. 2012)

“Next, Jessie and Dolores Faye offered the testimony of Cynthia Rogers, a board certified document examiner, to address the authenticity of Anne’s signature. Faye again objected, adding to the lack of proper pleadings objection the complaint that Ms. Rogers had not been listed as an expert witness on the pre-trial statement filed by Jessie and Dolores and that the authenticity issue had not been raised prior to trial. The trial court rejected Faye’s objection and allowed Ms. Rogers to testify.

“Ms. Rogers’ testimony was to the effect that the mark on the will at issue was not that of Anne. The trial court ultimately relied on Ms. Rogers’ testimony to conclude that the mark on the June 3, 2004 will was not made by Anne.”

Due to legal technicalities it was error for this evidence to have been received, so the finding by the trial court that decedent did not sign the will was reversed.

COMMENTARY: We are left to surmise whether or not plaintiff prevailed on a forged will.

552. *Estate of Robert E. Riggs v Way-Jo, L.L.C.; Kent v The Succession of Robert E. Riggs and Way-Jo, L.L.C.* No. 2011 CA 1651, C/W 2011 CA 1652. (E) (LA Ct. App. 1 Cir. 2012)}

“Finally, the Estate presented the testimony of Mary Ann Sherry (Sherry), who was accepted by the trial court as a handwriting expert.[6] According to Sherry, the Estate provided her with Riggs’ will and several medical records from North Oaks, dated from December 22, 1998 to April 13, 1999, that purported to bear Riggs’ genuine signatures for comparison with the signatures of Riggs on the purchase agreement and the February 22, 1999 act of sale. Based on her comparisons, Sherry concluded it was highly probable that the same person signed Riggs’ name on the purchase agreement and the act of sale. However, she opined that neither those signatures, nor the initials made beside the revisions on the act of sale, were made by the same person who signed the will and the medical records. Although Sherry indicated her conclusion was based on other factors in addition to the shakiness of the handwriting on the will and the medical records, she admitted that tremors in a person’s handwriting can come and go.”

COMMENTARY: The Estate won big at trial, but Way-Jo won big upon appeal. In reversing the trial court, the court of appeals states why it considered the expert evidence against the “great weight of the evidence.” Most reasons listed seem out of the expert’s control, such as the last one: “Nor do we find that the Estate sufficiently established the genuineness of the samples provided to Sherry from Riggs’ North Oaks medical records.”

On a happier note, part of the reversal assured the payment to the handwriting expert: “That portion of the trial court judgment casting the defendants, Way-Jo, L.L.C., John Bankston and Wayne Hagan, with all court costs is hereby reversed, and it is ordered that the Estate of Robert Riggs is to pay all expert witness fees owed to Dr. Ted Hudspeth and Mary Ann Sherry....” Ms. Sherry is a certified member of NADE.

553. *State v Netter*, No. 2011-KA-0908. (LA Ct. App. 4 Cir. 2012)

Mary Ann Sherry testified that defendant had not written certain signatures; however, on cross-examination she testified defendant had written a document he had denied writing.

COMMENTARY: Knowing Ms. Sherry, a certified member of NADE, I am confident she would have informed defense counsel of her entire opinion. Attorneys have to weigh risk benefit ratios in presenting certain evidence and at times hope opposing counsel stays away from some issues.

## *2. Louisiana Supreme Court.*

1998

554. *State v Cooks*, 720 So.2d 637 (LA 1998)

It was proper for document examiner to use as an exemplar a gang affiliation filled out by defendant. The examiner had said that the first exemplar had been deliberately disguised. The examiner testified that defendant had written incriminating letters to a witness.

COMMENTARY: A case of routine admissibility.

## 2003

555. *In re Harris*, 847 So. 2d 1185 (LA 2003)

Robert Foley, called as handwriting expert witness in a disbarment proceedings, testified that signatures in question were false and one might have been copied from the other. Recalled after examining more signatures, he said they were also false.

COMMENTARY: A case of routine admissibility.

## 2012

556. *In re Lee*, 85 So. 3d 74 (LA 2012)

At page 80: "By his own admission, respondent negotiated the sale with Mr. Nell. Robert Foley, an expert forensic document examiner, testified that Janet Lee did not sign her name to the bill of sale. Ms. Lee testified that she did sign her name to the bill of sale, but her testimony completely lacked any semblance of credibility. Based on this evidence, the committee found that Ms. Lee's purported signature on the bill of sale, which was notarized by respondent, was in fact not her signature. The salesperson was not Ms. Lee but respondent, who was not a licensed salesperson at the time. As such, the bill of sale was substantively false on this point. Furthermore, respondent's notarial attestation was false as to who signed the document as the salesperson."

COMMENTARY: A case of routine admissibility, while fortunately the attorney misbehavior is not routine with the vast majority of attorneys.

## S. MAINE CASES.

### *1. Maine Supreme Court.*

## 1994

557. *Board of Overseers of the Bar v Sylvester*, 650 A. 2d 702 (ME Supreme Judicial Court 1994)

At page 703: "Sylvester admitted that he withheld funds from his clients and that he added three words to the notes after they were signed, but insisted that he made these additions during a meeting with his clients. A qualified document examiner testified that five words, 'Criminal only. Collection separate fee.' were added by Sylvester with a different pen. The Court concluded that Sylvester made these additions after the meeting with his clients and without their knowledge."

COMMENTARY: A case of routine admissibility.

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## 2009

558. *Estate of George L. Fournier*, 2009 ME 17, 966 A.2d 885, 2009 Me. LEXIS 16 (ME 2009)  
The trial court properly relied in part on the opinion of a handwriting expert.  
COMMENTARY: A case of routine admissibility.

## T. MARYLAND CASES.

### *1. Maryland Courts of Appeal.*

## 1996

559. *Williams v State*, 342 Md. 724, 679 A.2d 1106 (MD Ct App 1996)  
At page 1111: “A handwriting expert testified that there were similarities between the handwriting on the note and Williams’ handwriting, but he could not reach an opinion on whether Williams wrote the note.”  
COMMENTARY: A case of routine admissibility, and hopefully not routine ineptitude.

## 1998

560. *Argyrou v State*, 709 A. 2d 1194, 349 Md. 587 (MD Ct. App. 1998)  
“The expert, Katherine Koppenhaver, having 1197\*1197 been qualified as an handwriting expert, testified without equivocation that it was Benner who signed the name of ‘Robert Flens’ on the June 30, 1992 Taylor Rental contract.”  
COMMENTARY: Ms. Koppenhaver is a diplomate member of NADE and a former president for two non-consecutive four-year terms.

## 2000

561. *Starke v Starke*, 134 MD Ap 663, 761 A.2d 355, 2000 MD App LEXIS 179 (MD Ap 2000)  
At trial the central issue was whether mother, the appellant, had signed her real property over to her son. Katherine Koppenhaver was mother’s handwriting expert witness while the son only called the notary public who notarized the deed. At [\*15] the trial judge is quoted: “I think the expert witness, Ms. Koppenhaver, did the best that she could, but document examination is far, far, far from an exact science when one does not have the original documents and is able, for instance, to run scientific tests on paper and ink and things of that nature.”  
The appeal was based on an issue not raised before the trial judge, and the Court of Appeal gives long discussion of it with detailed legal niceties: Was it clear error for the trial judge not to have found a confidential relationship between mother and son though not asked to?  
COMMENTARY: One suspects this case is a victim to the pernicious inferences the anti-expert experts promoted. Did the court raise its scepticism of handwriting expertise while the expert was still available to testify and so provide answer? I testified in a case where the judge listened intently, asked intelligent questions, then dismissed both sides’ handwriting expert

testimony as not scientific. He never gave hint of his attitude until making rulings. Also, if as implied the expert in *Starke* was denied access to originals, the ruling simply rewards the party that either disposes of or sequesters an original. The tests the trial judge mentioned are most often irrelevant to the question of authenticity of handwriting and signatures. And there document examiners do themselves as much damage as their critics do, fostering the fallacy that forensic handwriting examination is a secondary, minor skill at best, some examiners even charging clients for every lab test they can perform and seeming to rest their reliability on how much they can pad the fees versus the opposing examiner.

## 2011

562. *Miller v State*, writ certiorari granted, 409 Md. 413, 975 A.2d 875 (Ct. App. MD 2009); 28 A.3d 675, 421 Md. 609 (Ct App MD 2011)

At page 676: “For the reasons that follow, we hold that neither the Circuit Court nor the Court of Special Appeals erred in their conclusions that the handwriting expert’s testimony was admissible. We shall therefore affirm the judgment of the Court of Special Appeals.” The handwriting expert was called to prove, or maybe to suggest, defendant signed the murder victim’s signature to certain documents. As stated at page 676: “In support of its contention that Petitioner forged the deceased Mr. Convertino’s signature on the authorization to charge form, the State presented the testimony and written report of Robert J. Verderamo, a Baltimore City Police Department questioned document expert.” Verderamo’s expertise was stipulated to.

COMMENTARY: It seems the two principle issues were, one, Verderamo’s perplexity whether the murder victim had or had not signed the documents in question, and, two, the balance between the State’s right to present handwriting expert evidence and defendant’s right to prior disclosure. The State’s right prevailed to present its perplexed expert without prior disclosure.

## U. MASSACHUSETTS CASES.

### *1. Massachusetts trial courts.*

## 2000

563. *Fleet Finance, Inc. v Sammarco and Sammarco*, 8 LCR 410, 2000 Mass. LCR LEXIS 48 (Mass. Land Court, 2000)

“The following witnesses testified at trial: Patricia; Jean Caya Bancroft, FFI’s handwriting expert; and Alan T. Robillard, Patricia’s handwriting expert.” The judge, confronted with contrary expert opinions, said Patricia had not signed the document.

COMMENTARY: It does not seem that the judge accepted either expert’s evidence, but went on his own comparison of Patricia’s signature and other evidence in the case.

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564. *Commonwealth v Glyman, et al.*, 17 Mass. L. Rep. 146, 2003 Mass. Super. LEXIS 431 (Superior Court, Worcester, 2003)

Charged with falsification of a will, defendants moved for an *in limine* hearing to bar handwriting testimony “on ground that its reliability is not sufficiently established to meet the test of *Commonwealth v. Lanigan*, 419 Mass. 15 (1994) based on *Daubert v. Merrell Dow Pharmaceutical*.... For the reasons that will be explained, the defendants’ motion will be denied.” The Court reviewed cases pre- and post-*Daubert*. The decision is based on filings by the parties, since these stated all that would have been in a hearing. Saks was *in limine* motion expert for defendant and Kam for Commonwealth; John Breslin of US Postal Inspection Service was proffered trial expert for the Commonwealth. The decision enumerates Saks’s three theories and explains why they are incorrect or of no moment. Some footnotes give a precise critique, and so they are reproduced here verbatim:

(1) In *United States v Mooney*, 315 F. 3d at 62-63, the First Circuit affirmed the ruling of another judge in the Circuit who had considered the reasoning of *Hines* and declined to apply the same limitation.

(2) Professor Saks’s affidavit refers to these two decisions [*Hines* and *Starzecpyzel*] by name, but does not give their citations, and does not acknowledge that their holdings are contrary to the position he advocates. Such omissions are surprising in a submission from a law professor.

(3) Professor Saks himself is a professor of law and psychology at Arizona State University, with ‘doctoral training in experimental social psychology,’ with emphasis on ‘research methodology and statistical analysis.’ He has published articles in law journals, a legal treatise, and one article in the *Journal of Forensic Science*. It does not appear that he has published any empirical research of his own on any subject, or that he has published anything in the area of research design or methodology.

(4) The Court has disregarded those portions of Professor Saks’s affidavit that consist of argument and advocacy, as distinct from fact and opinions on matters of fact.

(5) Professor Saks draws an analogy to the field of DNA typing, in which experts do not claim uniqueness, but refer to the probability of coincidental similarity. The analogy seems less than fully apt, in that DNA involves a finite number of physical components, thus lending itself to calculation of probability, while handwriting is more in the nature of behavior, subject to virtually infinite variation.

(6) Professor Kam’s affidavit points out that certain of the studies on which Professor Saks relies have not been published in any peer reviewed publication.

(7) Professor Saks draws particular attention to variation in proficiency when the author is a teenager and when the sample is hand printed, and to bias arising from the examiner knowing the result desired or expected by investigators. This case does not involve teenagers. Although one of the entries on which Mr. Breslin opines is hand printed, the issue of ultimate significance in the case is the authorship of signatures. Although Professor Saks asserts that ‘In the present case . . . it appears that the examiner had been informed who the suspect was,’ nothing in the materials before the Court supports that assertion.

(8) Professor Saks criticizes Professor Kam's research on the theory that the results may have been skewed by different financial incentives affecting lay participants and professional examiners. Professor Kam has tested and refuted that theory, and has published the results of his test in a peer reviewed journal.

COMMENTARY: This is an excellent court decision giving the exact analysis that Saks and his like are wont to complain that courts do not give when disagreeing with them. I strongly recommend you acquire this complete text for your reference and study. The Court gives several of the very criticisms I have given, but much more succinctly and crisply. Regarding each footnote given above:

(1) Saks and his kind often reference nonprecedential cases as if they should at least shame the next court into agreeing with them. Note well that cases from higher courts setting law are only binding on their own lower courts, which even then might be able to distinguish or otherwise find good reason not to follow them in the instant case. Yet these professors of law in their non-expert roles will quote courts from foreign jurisdictions as if they set precedent.

(2) In *Glyman* Saks was arguing for total exclusion. This note nicely sets forth skills as an academic, if not lawyerly, illusionist. Depending on the thesis for a particular case, these two cases are fully cited and touted even to the Heavenly Court. So check out every single citation these kinds of witnesses and litigants throw against you.

(3) Note that he, who excoriates others for publishing empirical research not to his *post factum* approval, would excoriate himself even more if he were intellectually honest and an evidentially candid witness.

(4) In ethical codes of all forensic organizations which I have seen, legal advocacy in an expert witness is unethical. If you are faced with such a witness, impeach at trial on basis of codes of ethics and afterwards make formal complaint to any professional organization the witness belongs to.

(5) This is a most astute observation which is a key to explaining the type of science handwriting comparison is. However, due to the narrow-minded and unscientific definition given to "science" by many alleged scientists and the *Daubert* Court itself, what would remain residually science can have no scientific foundations, an argument I have made elsewhere.

(6) Touche!

(7) Similar to improper use of case law, both as to its misreading, its application in other jurisdictions, and the ignoring of it when relevant though inconvenient, they use inapplicable publications. Check absolutely everything such opponents claim supports their position, then research in all fields studying handwriting for applicable papers.

(8) Some courts side with Saks on the issue of refutation and others side with Kam. But what is there to choose between two witnesses who both misunderstand the graphic motor movement and what can make it individualistic? One thing only: Kam at least does honest hard work in support of his misconceptions while Saks merely keeps spouting the same misconceptions and asserting that all contrary evidence has some human flaw in it, never mind that his human flaws are far more numerous and dangerous in that they make it a rule of law that forgers have a legal right to the fruits of their forgery since no one has a legal right to bring contrary expert evidence. That indeed is the practical bottom line of the anti-expert experts' theory.

565. *United Rug Auctioneers, Inc. v Arsalen, et al.*, 16 Mass. L. Rep. 420, 2003 Mass. Super. LEXIS 189 (Superior Ct. Middlesex MA 2003); motion on fees, 16 Mass. L. Rep. 607, 2003 Mass. Super. LEXIS 245

The entire paragraph where the trial judge discusses the handwriting issue is reproduced because it illustrates how judges weigh contrary evidence and different kinds of evidence from difference sources.

“Concerning defendants’ counterclaim, all counts must fail because plaintiff has persuaded me of the main pillars of its lawsuit. Of course, if I were persuaded that United’s claim was based on a forged document, the case would stand on different footing. I am satisfied, however, that Arsalen’s agreement, Exhibit 2 is genuine. Two witnesses (Ronen Drory, Kim Bevins) testified that they observed Arsalen sign the document. The two handwriting experts who testified, Ms. Nugent for the plaintiff and Mr. Rice for the defendants, reached opposite conclusions. Rice said Bevins’ and Arsalen’s signatures are forged; Nugent opined that they are genuine. Each expert made a good impression and articulated plausible reasons for his/her opinions. Mr. Rice has somewhat more impressive credentials than Ms. Nugent, having participated in several high profile investigations. Handwriting analysis is, however, imprecise and not guided by uniform, widely accepted [\*19] objective standards. There is a fair amount of ‘ipse dixit’ in each expert’s testimony. For instance, in concluding that Arsalen’s signature on Exhibit 2 was forged, Mr. Rice points to numerous ‘stops’ of the pen in the final loop that distinguishes Arsalen’s signature. These ‘stops’ are based on wavy lines, or ‘ink blots,’ that appear throughout; yet, as plaintiff’s counsel points out, the signature *line* itself is ‘wavy.’ Thus these features may be nothing more than artifacts of the paper rather than proof of a slowly manufactured, forged, signature. Although both experts were well prepared and helpful in some respects, neither experts’ testimony engenders in me sufficient confidence to base a conclusion. Ultimately, with the humble acknowledgment that historical truth is often difficult to determine, I base my conclusion that exhibit 2 was not forged, either with respect to Bevins’ or Arsalen’s signature, upon Ms. Bevins’ testimony. She is a part-time secretary earning \$ 15,000 per year for United. Her husband, Mr. Isakof, works for United. Potentially these employment relationships might bias her in favor of United, and this could have affected her testimony, but I find it hard [\*20] to accept that she would come into court and flatly perjure herself, subjecting herself to possible criminal penalties, on a subject which, to a layperson at least, might be determinable by handwriting analysis. If she were willing to take that rather drastic step, it would seem more plausible simply for her to notarize the fictitious signature in the first place.” [Emphasis in original.]

COMMENTARY: At least 12 years ago Mr. Rice had a very impressive CV. It said he had studied with a friend of mine and myself, while neither of us had any record of such study. It said he had worked on the Hitler Diary case, though somehow all reports, journal papers and books I have seen on the matter failed to mention him. His claimed years of study/training and experience in questioned documents added up to well beyond 100. At one time an attorney claiming to represent Mr. Rice threatened to sue me for defaming the man. When I finally said go ahead and sue since, among other things, I would then have discovery of him, I received a letter thanking me for my apology. Which is more than enough said.

In the second report, 16 Mass. L. Rep. 607, 2003 Mass. Super. LEXIS 245, the judge allowed reasonable attorney and expert witness fees to plaintiff.

## 2006

566. *Montgomery, et al., v Jackson, et al.*, and related case, 14 LCR 661, 2006 Mass. LCR LEXIS 134 (Massachusetts Land Court, 2006)

“The Defendants also made a Motion to Preclude Testimony of Richard Christopher, the Plaintiff’s expert handwriting witness, based on his alleged lack of qualifications and because he was not properly identified as an expert prior to trial. The court (Trombly, J.) allowed the Motion. On the second day of trial, the Plaintiffs filed [\*6] and argued a Motion to Reconsider the Allowance of the Motion to Preclude Testimony of Richard Christopher. The court denied the Motion. Plaintiffs then made a Motion to Preclude Testimony of Defendants expert witness, Alan Robillard, and filed a Motion for a Mistrial. Both Motions were argued and denied.”

“13. The Defendants’ expert witness, Alan T. Robillard, testified that Anita’s signature on the deed was ‘more likely than not’ valid. He testified that there are five forms of forgery-- Mechanical fabrication, Freehand, Traced, Simulated, and Auto--and that Anita’s signature did not contain characteristics of any of these types of forgeries. Robillard, however, was unable to conclude that the signature was *definitely* not a forgery because the sample on which he based his opinion was a photocopy, and he prefers to work from original instruments.”

The transcript of Christopher’s deposition was allowed to be marked as an exhibit. The judge said that even if Christopher had been allowed so to testify at trial, the ruling would still have been that the signature was valid.

COMMENTARY: The brief description of Robillard’s testimony shows excellent understanding of the terminology and techniques in handwriting identification. The plaintiffs had originally identified a handwriting expert named Christine Cusack.

The case report is of interest for other issues that are treated, such as lay opinion as to handwriting and how undue influence invalidated a deed.

## 2007

567. *Baghdady v Baghdady*, 2007 Mass. Super. LEXIS 145 (Superior Court, Middlesex, 2007)

At page [\*7]: “Ron Rice, defendant’s handwriting expert, also testified that he had studied exemplars of plaintiff’s signature, and that plaintiff’s signature on the 1974 Power of Attorney was authentic. Accordingly, the Court finds that plaintiff has failed to sustain his burden of proof that any of the signatures was forged....”

COMMENTARY: A case of routine admissibility.

## 2008

568. *Hobson v Hobson, et al.*, 16 LCR 104, 2008 Mass. LCR LEXIS 10 (Mass. Land Court 2008)

At page [\*5] it is stated that Richard Fraser, M.D., was offered as a handwriting expert by plaintiff. However, later it is stated: “Defendants also rely heavily on the testimony of Richard Frasier, M.D. (‘Dr. Frasier’), whom they offered as a handwriting expert at trial and who testified that the signature appearing [\*16] on the 1995 Deed is not a forgery.”

The court found that the signature in question was not a forgery, but asserted: “While

defendants offered [\*27] Dr. Fraser as their handwriting expert, the court does not credit his testimony due to his questionable training and lack of memberships in and certifications by reputable associations, normally standard for a person purporting to be a handwriting expert.”

COMMENTARY: The trial judge seemed to go out of his way to make clear that the finding that the signature was not a forgery was not based on the expert’s testimony, though that was the opinion of the expert. Both spellings of the expert’s name are used in the case report. His web site has “Fraser” and notes that he studied under Ron Rice, who did not study under me during his once-claimed more than 100 years of study and experience.

## 2009

569. *McGeoghean, et al., v McGeoghean, et al.*, 25 Mass. L. Rep. 528, 2009 Mass. Super. LEXIS 147 (Superior Court, Middlesex, 2009)

“Defendants’ handwriting expert, moreover, while disputing the authenticity of Sarah’s signature on the deed and on her POA to Aaron Heesch, admitted that his opinion as to her signature’s having been forged on those documents, was only ‘tentative,’ and that he could render a definitive opinion only if he had been provided with her original signatures on the contested documents, which he was not. Accordingly, the Court finds that not only did the conveyance to John unquestionably fulfill Sarah’s intentions, but that, in all of the circumstances, defendants have failed to sustain their burden of proof regarding the alleged forgery of Sarah’s signatures on the POA to Heesch and [\*22] on the deed.”

COMMENTARY: Once more the failure of the clients or attorneys to supply proper materials embarrasses their expert.

## *2. Massachusetts Courts of Appeal.*

## 2002

570. *The Cadle Company v Vargas*, 55 Mass. App. Ct. 361, 771 N.E.2d 179, 2002 Mass. App. LEXIS 860 (Mass. App. 2002)

“[\*3] 2 The defendant acknowledged that she had from time to time signed papers that Newfield brought home, but she had no specific recollection about the 1985 paper. She assumed the signature was hers (the line for signature by ‘witness’ was left blank). The plaintiff improved on the point (needlessly) by the testimony of a handwriting expert.”

COMMENTARY: The Court of Appeals might well think the expert testimony to be needless, but at times the needless is most necessary. I was not called by an attorney because the purported signature on a purported promissory note, existing only in a poor fax, was so lacking in any resemblance to an authentic signature that the attorney said no one could possibly find it genuine. The judge did. Upon a motion for reconsideration the new attorney had me prepare a very detailed declaration under oath. The client later told me that at the hearing on the motion the judge informed the plaintiff that he believed nothing the plaintiff had told the court and that the plaintiff would one day receive what he deserved. Then the judge said that the motion for

reconsideration was denied, defendant must pay on the promissory note. I suspect many document examiners can recount a similar tale.

### 2003

571. *Commonwealth v Murphy*, 59 MA App Ct 571, 797 NE 2 394, 2003 MA App LEXIS 1096 (Mass. App. 2003); review denied, 440 Mass. 1109, 801 N.E.2d 802, 2003 Mass. LEXIS 927 (2003)

In an identity theft case, defendant argued on appeal that Trial Judge erred in admitting testimony of handwriting expert, Nancy McCann. Objection and motion to strike were made the day following lengthy cross-examination, and so they were not timely. There had been no motion for pretrial hearing on scientific reliability. Thus the Court of Appeals defers to the Judge's exercise of discretion. Nevertheless, at page 399 it is stated: "We conclude that, as the courts in Massachusetts have long accepted as reliable expert testimony about the authorship of handwriting, a *Lanigan* hearing was not necessary even had one properly been requested."

COMMENTARY: At least in Massachusetts rationality reigns as to the admissibility of the admissible.

### 2005

572. *Commonwealth v Martin*, 63 Mass. App. Ct. 587, 827 N.E.2d 1263, 2005 Mass. App. LEXIS 489 (Mass. App. 2005)

At page [\*6]: "A handwriting expert called by the Commonwealth testified that the notes appeared to be in the same handwriting as job applications found at the campsite, which were filled out with the defendant's name."

COMMENTARY: A case of routine admissibility.

### *3. Massachusetts Supreme Judicial Court.*

### 2000

573. *Commonwealth v Harwood*, 432 Mass. 290, 733 N.E.2d 547, 2000 Mass. LEXIS 425 (Mass. 2000)

"We consider whether it was abuse of discretion for a judge to suppress the testimony of a Commonwealth witness as a remedy for a missing file containing documents that the defendant asserts were exculpatory." Defendant claimed a key witness against him lied to the Grand Jury when denying he had signed a certain letter which was now lost. Defendant claimed a handwriting analysis would have proved the signature genuine. The Trial Judge suppressed the witness' testimony at trial. When the original file was reported missing, "the judge allowed a motion *in limine* permitting the Commonwealth to use copies in place of the missing originals. The defendant's document examiners reported, however, that '[b]ased upon the quality of the photocopied signature examined, authorship of the "[Leif] Mikkelsen" signature [on the February 5 letter] cannot be determined at this time. An examination of the original document would



establish a more conclusive opinion.” The Commonwealth’s document examiner, Barbara Harding, also testified that the original was preferable. The Commonwealth had not submitted the February 5 letter to Harding for analysis. Suppression of the testimony was affirmed.

COMMENTARY: One can say by way of inference that, if the Supreme Judicial Court had not considered handwriting comparison reliable, its ruling would have been most unreasonable and badly founded. At the very least, the expertise is clearly admissible in Massachusetts in the post-*Daubert* era. Ms. Harding is a member of National Association of Document Examiners.

#### 2003

574. *Commonwealth v Caputo*, 439 Mass. 153, 786 N.E.2d 352, 2003 Mass. LEXIS 269 (Mass. 2003)

The parties stipulated that defendant had filled out an insurance application in his favor bearing his estranged wife’s signature. A handwriting expert testified that the date and signature were not in the wife’s hand. Conviction of defendant for murdering her and her mother was affirmed. The trial judge had properly denied a motion to suppress all documents used by the expert.

COMMENTARY: A case of routine admissibility.

#### 2006

575. *Commonwealth v Weichell*, 446 Mass. 785, 847 N.E.2d 1080, 2006 Mass. LEXIS 321 (Mass. 2006)

The trial judge admitted and adopted the defense handwriting expert’s identification of the writer of a letter.

COMMENTARY: A case of routine admissibility.

#### 2008

576. *Commonwealth v Dubois*, 451 Mass. 20, 883 N.E.2d 276, 2008 Mass. LEXIS 206 (Mass. 2008)

It was not error to permit a handwriting expert to decipher reverse writing by defendant. Likewise, it was not error to deny payment by the Commonwealth for the defense’s handwriting expert used to support a motion for a new trial.

COMMENTARY: Cases such as these are valuable for supporting the admissibility of specialized skills in handwriting expertise. However, the particular expert’s competence in the special skill would have to be demonstrated to the satisfaction of the trial judge.

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## V. MICHIGAN CASES.

### 1. Michigan Courts of Appeal.

#### 1996

577. *In re Lavech*, 1996 MI App LEXIS 1673 (MI Ct Ap 1996)

Marie Lavech, deceased, left an unsigned 1973 will and a signed 1981 will. Appellant claimed the 1981 was forged. Leonard A. Speckin was appellant's expert and Robert Haskins was appellee's. Haskins testified he used graphology to determine that the 1981 will bore a genuine signature. No objection was entered at trial to his methods, nor apparently was a *Davis-Frye* hearing requested. Thus error was not preserved for appeal. Such hearings require court and counsel to evaluate fields they have no expertise in, "nevertheless, the threshold task of framing the issues is assigned to counsel." Michigan's Appeal and Supreme Courts had not ruled on whether graphology was a recognized field.

COMMENTARY: One cannot draw conclusions from the decision, since the Court of Appeals carefully notes the issues involved were not preserved for appeal. Surely, neither party was challenging the admissibility of expert handwriting testimony, while appellant was challenging only one approach, but did so only on appeal and not properly at trial. Experts should take responsibility to offer the attorney/client intelligent and objective support for challenges to what they consider to be unreliable opposing expert evidence, but they should adhere to the ethical practice of avoiding personal attacks.

#### 2002

578. *In re Estate of Moore. Kuerbitz v Ballou*, 2002 Mich. App. LEXIS 1532 (Mich App. 2002)

"The trier of fact is in the best position to determine the proper weight to afford a handwriting expert's testimony. *In re Skoog Estate*, 373 Mich. 27, 29; 127 N.W.2d 888 (1964); *Marlo Beauty Supply, Inc v Farmers Ins Group of Cos*, 227 Mich. App. 309, 323; 575 N.W.2d 324 (1998). In the instant case, the expert witness testified decisively that in his opinion the signatures [\*7] were forged. While he opined that pain or writing with an off-hand could make writing larger and more spaced out, he maintained that it would not change the basic letter formation. The expert witness further noted that there was a consistent tremor and several blunt stops in the will signatures that indicated forgery. Respondent did not present any expert testimony to refute these claims. Accordingly, the trial court did not clearly err when it held that the will signatures were forged."

COMMENTARY: Apparently the expert recognized the difference between fine, or health, tremor and gross, or muscle, tremor, as well as between pauses to calculate the next stroke and those from either pain or deficient energy.

579. *People v Kissinger*, 2002 Mich App LEXIS 1336 (Ct Ap MI 2002)

In a post conviction motion defendant offered expert handwriting evidence, the nature of which is not indicated. Trial Court held it was only cumulative of evidence that had been

presented at trial and thus irrelevant. This holding was not error.

COMMENTARY: This is a good example of the rule that expert evidence must first be shown to be relevant, and, if the evidence is not relevant, reliability is a moot question.

## 2003

580. *Department of Consumer & Industry Services, dba Board of Pharmacy, dba Disciplinary Subcommittee, v Sobh*, 2003 Mich App. LEXIS 2367

Todd Welch's testimony that respondent's signatures on test center logs were simulations was more credible than Rita Lord's to the contrary.

COMMENTARY: Statements critical of Lord's examination are suspect in themselves. The decision more than suggests that Lord was hoodwinked by her own client. For example, some known signatures had been represented to her as the questioned.

Nonsense was offered that she was ineligible for certification by American Board of Forensic Document Examiners (ABFDE), without further stating the prejudicial and partisan nature of some requirements. It is asserted that ABFDE is "the only certifying organization recognized by the" American Academy of Forensic Sciences, which is to say they only recognize themselves, and that is hardly a commendation for anybody. Ms. Lord, who was a personal friend of mine, is deceased.

I met Mr. Welch at a meeting of another organization where the members were ignoring visitors. Mr. Welch went out of his way to speak to the rest of us in a most courteous and professional manner.

581. *Munger v McDonald*, 2003 Mich. App. LEXIS 1064 (Mich. App. 2003)

In a dispute over a quitclaim deed the court heard testimony from handwriting experts for both sides.

COMMENTARY: A case of routine admissibility.

582. *Phillips v Rahal, et al.*, 2003 Mich. App. LEXIS 2480

Lay and expert testimony that the signature in question was false with notary's testimony established forgery by clear and convincing evidence.

COMMENTARY: A case of routine admissibility.

583. *Webb v Greer, et al.*, 2003 Mich. App. LEXIS 1721 (Mich. App. 2003)

A handwriting expert testified that a decedent's signatures on quitclaim deeds were written by someone else.

COMMENTARY: A case of routine admissibility.

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## 2004

584. *In re Estate of John Ronald Werner. Watkins v Estate of Werner*, 2004 Mich. App. LEXIS 1597 (Mich. App. 2004)

“We do not have a firm and definite conviction [\*2] that the probate court made a mistake in effectively concluding that Werner’s purported signature on the alleged promissory note was a forgery and, accordingly, holding that appellant did not establish his claim by a preponderance of the evidence. The probate court’s finding was strongly supported by reasonable considerations in the record. The probate court reasonably viewed the testimony of appellant’s handwriting expert as amounting to little more than a conclusion that Werner provided the disputed signature because of the similarity of the style of writing of the disputed signature to samples of Werner’s signature. However, as the probate court indicated, this does little or nothing to exclude the possibility that the signature was traced. Rather, the testimony of appellee’s handwriting expert strongly supports a conclusion that the signature was traced or drawn in an effort to fabricate Werner’s signature. The analysis of appellee’s expert finding that signatures by Werner on other documents did not show stopping and starting of the pen as in the disputed signature tends to call into question appellant’s expert’s attribution of this to Werner’s age and possible health problems. [\*3] In addition, the probate court reasonably viewed appellee’s handwriting expert as having superior qualifications in light of his testimony describing his training and experience in his work for the state police.”

COMMENTARY: Appellant’s handwriting expert made the mistake often made. Just because indicia of false writing resemble indicators of age or illness, they are attributed to same to support a finding of authenticity. On the other hand, for the same reason they are attributed to forgery to support a finding of falsity. Appellee’s handwriting expert did the expert thing by verifying whether these indicators appeared in the exemplar signatures. If they do, they are likely evidence of genuineness, if not, as here, they are evidence of falsity. They cannot be correctly interpreted in isolation from the field of exemplars.

## 2005

585. *People v Riggins*, 2005 Mich. App. LEXIS 769 (Mich. App. 2005)

“In addition, in order to help defendant, defense counsel introduced a letter purportedly written by codefendant admitting his guilt in the crime. After codefendant’s counsel called a handwriting expert, the jury learned that the writing in the letter did not match [\*6] codefendant’s handwriting, but matched the writing of defendant’s mother.”

COMMENTARY: I wonder if mother was prosecuted for forgery and obstruction of justice by fabricating false evidence.

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586. *In re Estate of Bessie Pearl Jones. Wilson v Oliver*, 2007 Mich. App. LEXIS 204 (Mich. App. 2007)

Wilson's expert said Jones' signature on a quitclaim deed was forged, while Oliver's expert was inconclusive, requesting more exemplars.

COMMENTARY: A case of routine admissibility.

587. *The Estate of Miljan, et al., v Jedick, et al.*, 2007 Mich. App. LEXIS 1963 (Mich. App. 2007)

"And, of critical importance, the court clearly found the testimony of defendants' handwriting expert, who was much more credentialed and experienced, [\*5] more credible than the testimony of plaintiffs' handwriting expert."

COMMENTARY: A case of routine admissibility.

588. *People v Graham*, 2007 Mich. App. LEXIS 810 (Mich. App. 2007)

The court properly permitted the prosecutor to add a handwriting expert to his list of witnesses since he had waited to see if defendant would plead. "Defendant also argues that the trial court abused its discretion by allowing Ruth Holmes, the prosecutor's handwriting expert, to testify at trial without evaluating whether her testimony was reliable or would assist the trier of fact." Since defense made no challenge to Holmes, no specific enquiry by the court was required.

"At trial, Holmes explained the methodology she used to evaluate the documents. Holmes used various forms of magnifiers to analyze individual letter formations. She scanned the documents so that they could be analyzed on a computer, using different measuring devices to evaluate whether the same person wrote them. She found a number of common characteristics in the documents, which were explained in her testimony. She conceded, however, when cross-examined by defense counsel, that there were some dissimilarities, but they did not alter her opinion that each document was written by the same person, with the highest level of certainty for an expert in her field.

"Because the primary role of a handwriting expert is to draw the jury's attention to similarities between a known handwriting sample and a contested writing [citation omitted], and there is nothing in the record to indicate that Holmes used an unreliable [\*19] method to identify similarities between the four documents, we conclude that defendant has not established that the admission of Holmes's handwriting analysis constituted plain error."

COMMENTARY: Ruth Holmes is a member of National Association of Document Examiners.

589. *People v Leiterman*, 2007 Mich. App. LEXIS 1784 (Mich. App. 2007)

At page [\*4]: "Also, at defendant's trial, handwriting expert Thomas Riley testified on behalf of the prosecution that after comparing the words 'Mixer' and 'Muskegeon,' which were found written on the cover of a phonebook seized from the basement of the law school library by investigators in 1969, with several known samples of defendant's handwriting, he believed it to be 'highly probable' that defendant wrote the words on the phonebook cover." This helped put

defendant in the area where Ms. Mixer, a law student, had been sexually abused and murdered 30 years previously.

An extensive discussion of admissibility of expert handwriting testimony concludes: “Nor do we find that counsel was ineffective for having failed to object to the testimony of the prosecution’s handwriting expert, Thomas Riley, as misleading for having been based on (1) a photograph of the questioned document, [\*28] as opposed to the original, and (2) an analysis that ignored certain aspects of defendant’s known writings. Even had such an objection been made, such matters affect the weight to be accorded Riley’s opinion by the jury, rather than its admissibility. Moreover, the limitations associated with analysis of a photograph and the appropriateness of Riley’s analysis were sufficiently challenged at trial by defense handwriting expert Robert Kullman.”

COMMENTARY: One would like to know the compelling evidence that supported a “highly probable” finding from comparison with two non-original words.

## 2008

590. *Fair and Fair v Moody, et al.*, 2008 Mich. App. LEXIS 2542 (Mich. App. 2008)

In a somewhat convoluted real estate case, the handwriting issue was straightforward: Did plaintiffs sign the papers selling their house? The trial court said no. The complete discussion of the handwriting expert evidence is quoted because of the excellent summary of technical matters that it provides:

“The trial court also heard from plaintiffs’ handwriting expert, Michael Sinke, who testified that his analysis positively eliminated plaintiffs as authoring the signatures on the closing documents. LaSalle’s handwriting expert, Todd Welch, testified that he could not come to a conclusion one way or the other following his analysis. Both experts compared known exemplars against the signatures on the closing documents. For the most part, the signatures at issue looked nothing like the exemplars, and the ‘n’ at the end of Mr. Fair’s first name was missing on all of the challenged signatures, while being included on all of the exemplars. Both experts noted that, while there was some fluency in Mrs. Fair’s exemplars and her purported signatures, the signatures on the documents at issue showed signs of many stops and starts, hesitation, slowness, pen lifts, and blunt beginning and ending strokes. This would be typical of a simulated forgery, i.e., one in which the forger from memory or observation tries to recreate the signature so that it appears similar to a true signature. Welch opined that the challenged [\*10] signatures showed clear signs of simulated forgeries, given the stops and starts, slowness, and pen lifts, but the problem was that they looked nothing like the exemplars. Although Welch’s analysis was inconclusive, he opined that the signatures at issue lent themselves to being disguised or auto forgeries, i.e., an attempt by a person to sign his or her name in a style different than normal so that the signature could be disavowed later. Sinke disagreed that these were disguised or auto forgeries.”

COMMENTARY: “Auto forgeries” is an undesirable term, to state it diplomatically. How can one forge oneself, which is what it means literally? It is nothing but a disguise, since it is a deliberate distortion of one’s handwriting or signature to make it look as if someone else wrote it. How such a silly and useless term ever gained currency is a mystery.

591. *People v Bryant*, 2008 Mich. App. LEXIS 472 (Mich. App. 2008)

Defendant was convicted of “first-degree criminal sexual conduct,” aggravated stalking, and assault and battery. He had a string of attorneys, one of whom believed him when he said he had not written anonymous letters to his victim. The attorney obtained a handwriting expert to prove this, which expert was subsequently used by the prosecutor to prove that he had. With his last attorney he micromanaged his own case such as to destroy the credibility of his defense witnesses. Convictions were affirmed.

COMMENTARY: With some criminal defendants a prosecutor is almost superfluous.

592. *People v Pierce*, No. 274869. (MI Ct. App. 2008)

“Thomas Riley, a forensic document examiner, testified that there were indications that Tanya Lester did not write her own name on two checks. However, he was unable to offer any opinion regarding whether Pierce signed Lester’s name.”

COMMENTARY: A case of routine admissibility.

## 2009

593. *In the Matter of the Stanley Bednarz Trust. Smigielski v Glanty*, 2009 Mich. App. LEXIS 1349 (Mich. App. 2009)

“Next, petitioners argue that the probate court abused its discretion when it precluded handwriting expert, Dr. Robert D. Kullman, from reviewing or testifying regarding his opinions of the original copies of the power of attorney, will and trust. Petitioners did not include this challenge in their Statement of Questions Presented. Therefore, it is not properly before this Court. See *MCR 7.212(C)(5)*; *Weiss v Hodge*, 223 Mich App 620, 634; 567 NW2d 468 (1997). However, even if we were to consider this argument, the probate [\*8] court’s sanctions would not constitute an abuse of discretion. The court’s rationale was sound, taking into consideration the timing of the request and the possible prejudice to respondents.”

COMMENTARY: Though no testimony was given, this is included lest it be represented as an instance of finding either the expert or the expertise unreliable. The reasons given for the exclusion are legal technicalities.

594. *People v Hodge; People v Buggs; People v Walker*, 2009 Mich. App. LEXIS 1525 (Mich. App. 2009)

Frank Marsh was properly qualified to testify as a handwriting expert. “Although Marsh testified that he had not had any standardized training in document comparison, he did have [\*29] extensive experience in the field....

“Further, Buggs argues that the graphology evidence presented by Marsh was unfairly prejudicial. We disagree. In summary, Marsh testified that the way a ‘y’ was written in the note was an indicator of possible violence or thinking of violence. Testimony stating that the author of the note was an indicator of possible violence or thinking of violence was hardly a revelation to the jury. It seems clear that by the author of the note calling himself ‘the .22 caliber killer,’ he has some violence on his mind. Marsh simply stated the obvious, and thus the court did not commit plain error affecting substantial rights in allowing the testimony.”

COMMENTARY: Every document examiner I know of, including those with graphological training whether they will admit to it or not, would agree that defense counsel should have made a very strong case at trial to have Marsh disqualified and his testimony stricken for having mixed in an extraneous discipline. It would be like a DNA expert testifying on paternity mentioning a person's cultural choices as confirming evidence of family descent.

595. *People v Larry*, No. 283364. (MI Ct. App. 2009)

In a conviction for solicitation to commit murder, part of the evidence was a letter defendant passed to another prisoner. "At trial, expert document examiner Ruth Holmes opined that there was 'the highest degree of probability' that the handwriting on the note defendant handed to Henderson matched the handwriting on other documents written by defendant."

COMMENTARY: A case of routine admissibility. Ms. Holmes is a certified member of NADE and has served on its Board of Directors.

596. *People v Lees*, 2009 Mich. App. LEXIS 13 (MI App. 2009)

"Detective Lieutenant Thomas Riley, a Document Examiner [\*5] with the Michigan State Police, testified as an expert. Defendant does not dispute Riley's qualifications as an expert witness, but rather claims that his testimony was inadmissible under MRE 702, MRE 402, and MRE 403 because Riley admitted that his findings were inconclusive. Defendant argues that expert testimony regarding inconclusive findings cannot assist the trier of fact. We disagree."

Later a semantic discussion sheds this dubious light on why an inconclusive opinion is conclusively helpful in the court's view: "An untrained layman would require assistance from an expert in order to determine the issue of exactly whose handwriting was on the questioned check. Moreover, just because evidence is 'inconclusive' does not mean that it is of no assistance to the trier of fact. Rather, it merely means that the evidence does not lead to a 'definite result.' See Black's Law Dictionary (8th ed, 2004) (defining 'inconclusive' as 'not leading to a conclusion or definite result.'). Riley's testimony was not simply that his findings were inconclusive. Instead, he stated that there were indications that the signature on the front of the questioned check did not belong to complainant, and that the signature on the back of the questioned check did belong to defendant. Riley merely qualified these findings as not being conclusive. The jury was entitled to determine how much weight to give to Riley's testimony."

COMMENTARY: The discussion never addresses specifically how inconclusive findings can assist the jury and do not make the testimony inadmissible. Compare this to the number of times a court dismisses expert testimony when any part of it at all is "inconclusive" or less than definite even.

## 2012

597. *Berry, conservator for Nassab Berry, a protected person, v Myslinski*, No. 305564. (MI App. 2012)

The description of the expert's testimony is: "Robert Kullman, a forensic document analysis expert retained by plaintiff, determined that the signatures on the two mortgages were likely made by the same person, and that Nassab's known signature samples (both recent and historical



samples) were likely signed by the same person. He further determined that the signatures on the mortgages, compared to the known signature samples, had ‘substantial significant differences’ and ‘no significant similarities.’ Kullman concluded that, ‘to a high degree of probability’ Nassab did not sign the mortgages. Kullman noted that he did not have original signatures from the samples, and therefore, the ‘high degree of probability’ is the highest opinion he could offer regarding the comparison, given the photocopy limitation.”

The evaluation by the trial judge was: “When we’re dealing with expert testimony like the testimony that Mr. Kullman presented, I have to have evidence that corroborates that testimony. I’m not gonna rely just upon expert testimony. Why? Because the facts have to support the conclusion that the expert reaches. Moreover, the expert is being paid. And so that always makes their testimony somewhat suspect. So from my perspective, I’m looking for evidence that supports Kullman’s opinion. And I don’t see it there. The facts support Myslinski’s testimony. So, I find that, in fact, the mortgages were not forged.”

COMMENTARY: The trial judge was upheld, but the report yells out for a critical evaluation of the matter. The suspicion is that the trial judge judged from biases, not objective evaluation of the evidence. “T” is a puzzlement,” to quote the King of Siam, that facts must prove the expert right, not the expert prove the facts, and here supposedly “the facts” support the defendant. Additionally, the supporting “facts” would have come from the defendant, who, if the documents were forged, might have been the forger, but certainly benefitted by it.

I have touched on this elsewhere, that we must bear in mind that case reports are authored by those who, however rarely, are only justifying their own position on the issues addressed. They see that which they see and not what they do not see. They believe that which they believe and not the opposite of what they believe. Strong inclinations to subjectivity are inherent in this truth about all of us. We assume going in that every case report is entirely objective and impeccably accurate in all details reported. I believe this case report is a most sobering experience that nudges us to modify our implicit, but at times blind, faith in all that issues from our courts of law.

598. *McConnell, et al., v McConnell, et al.*, No. 304959. (MI App. 2012)

In accepting the testimony of the handwriting expert, the trial court properly considered it along with the other evidence, not just in itself.

COMMENTARY: A case of routine admissibility.

599. *People v Franklin*, No. 300371 (MI App. 2012)

At trial, a woman identified two love letters to her as having been written by defendant. He denied writing them along with a third the prosecutor presented. “The trial court decided to call a handwriting expert to examine the letters and compare them with samples of defendant’s known handwriting. After an adjournment, the trial court called Detective Jan Johnson, a handwriting analyst with the Michigan State Police. Defense counsel did not object. Detective Johnson opined that one of the letters was written by defendant, and that defendant ‘may have’ written the other two letters.” There was no error involved.

COMMENTARY: A case of routine admissibility.

## W. MINNESOTA CASES.

### *1. Minnesota Courts of Appeal.*

#### 2000

600. *In the Matter of the Real Estate Appraiser's License of Fidelis E. Agaga*, 2000 Minn. App. LEXIS 1216 (Minn. App. 2000)

“Agaga next alleges the ALJ [Administrative Law Judge] prejudiced his rights by accepting [Karen] Runyon’s testimony. He asserts that foundation was lacking because Runyon relied [\*8] on photocopies rather than originals in making her determinations....

“During the hearing, Agaga objected to admission of the photocopied documents and asserted that these documents were not the best evidence. The ALJ overruled the objection, concluding that the photocopies were the best available evidence. The ALJ noted, however, that use of photocopies would impact his fact-finding. [Footnote omitted.]

“Agaga also objected on foundation grounds when Runyon was asked for her conclusions. The department then offered to question Runyon regarding whether she had sufficient material with which to formulate an opinion. When asked this question, Runyon [\*9] responded that she could give a conclusion ‘with a limitation’ because of the use of photocopies. She then explained the procedure she used in evaluating the samples and opined that it was ‘probable’ that Agaga signed the questioned documents. She noted that her conclusion could have been more decisive if she had used original documents.”

COMMENTARY: By the case report, Ms. Runyon was forthright and adhered to accepted standards. The two spellings of her name are in the case report. The wording of the best evidence rule is something to be kept in mind. The Attorney’s General office had the originals but could not find them at the time of the hearing. It seems there should have been some sanction for such carelessness.

601. *Fletcher v State*, 2000 Minn. App. LEXIS 997 (Minn. App. 2000)

“During trial, the state was able to offer strong evidence of appellant’s guilt through officers Reed and ‘Sam,’ R.A., and appellant’s incriminating hand-written ‘hit’ contract. The state provided a foundation for admission of the contract through a handwriting expert, who concluded that appellant had drafted the contract.”

COMMENTARY: A case of routine admissibility.

602. *In Re: Estate of Clara Marie Snow*, 2000 Minn. App. LEXIS 525 (Minn. App. 2000)

“The district court [\*4] found that the signatures on the purported will were not Clara Snow’s. The district court relied on the testimony a handwriting expert, Ann Hooten, who testified that the signature on the signature line of the will was ‘highly suspect’ because it deviated from other known signatures of the decedent. Hooten also testified that there was a ‘strong probability’ that the signature on the will was not Clara Snow’s, and that the signatures appeared to be traced or forged.”

COMMENTARY: Minnesota requires two witnesses to sign the will within a reasonable time of Testator's signature. One witness gave April 27, 1995, the Saturday Testator signed as the date he witnessed her signature. However, April 27, 1995 was a Thursday, so that, combined with other evidence, this began the judge on a line of thinking whereby the finding was that the will had not been witnessed within a reasonable time but a year later.

603. *State v Mancheski*, 2000 Minn. App. LEXIS 55 (Minn. App. 2000)

A handwriting expert said defendant "probably" signed a certain receipt, thus making his alternative theory of the forgery unreasonable.

COMMENTARY: A case of routine admissibility.

## 2002

604. *Langeslag v KYMN Inc., et al.*, 2002 Minn. App. LEXIS 1202 (Minn. App. 2002); reversed on other grounds, 2003 Minn. LEXIS 407 (Minn. 2003)

"While discovery was reopened, respondents disclosed their handwriting expert and the district court agreed to permit that expert to examine the letter. Appellant contends that she was prejudiced as a result. However, at the bench trial on appellant's non-jury claims, both appellant's handwriting expert and respondents' expert testified about the letter. The district court found that, 'based on her education and extensive experience, [respondents' expert] was the more credible witness.' Appellant asserts that she was damaged by the court's decision to admit respondents' expert as a witness, but she does not [\*23] explain how, given that her own expert had a longer time to examine the letter and was also able to testify."

COMMENTARY: The rule should be that weight of an expert's opinion is to be based solely on the theory, methodology, factual observations and logic of the opinion itself. To base credibility and acceptance of an expert's opinion on the qualifications to testify as an expert is for the fact-finder to surrender the legal obligation to find fact to the opinion witness. Thus a suave expert need not present any evidence worthy of credence in order to enjoy an allegedly greater credibility than a more competent, though less experienced, opposing expert. Thus, attorneys and litigants may shop for the expert most expert at blarney.

## 2005

605. *In re: Estate of Ann C. Dalbec, Deceased*. No. A04-1524. (MN Ct. App. 2005)

The contestant of Dalbec's will relied on the testimony of forensic document examiner Karen S. Runyon. The case report gives a rich array of evidence Runyon developed in support of her opinion that the signatures in question were not by decedent. The court's discussion sets forth the reasons why the testimony of purported eye witnesses was credited over Runyon's testimony.

COMMENTARY: The case report is an example of how a court can always find excuses, I mean legally acceptable reasons, to reject evidence. For example, it is said that Runyon admitted there was a 25% chance of error in her opinion. I take that with caution since standard terminology for expressing opinions by document examiners are not mathematical. Even so, a 25% chance of error for an opinion being in error is not 25% proof of the truth of the contrary

opinion, yet psychologically that is how it is taken. To put it another way, since the 25% chance of an incorrect opinion actually means a 75% chance of a correct opinion, it also means a 75% chance that the contrary opinion is in error. It is some kind of foolishness to go with a 75% chance of being in error. However, this all points up the wisdom of McAlexander, et al., who first published the terminology in the March 1991 issue of *Journal of Forensic Sciences*, that mathematical statements should be avoided in handwriting opinions.

Another part of the misunderstanding of what Runyon had testified to is the lack of precision and quality in expression as given in the case report. I suspect that the commendable list of observations credited to Runyon support a much firmer finding of falsity, since Ordway Hilton in his book said a single significant difference prevents an identification until reasonably explained. In an article in *International Criminal Police Review*, February 1957, he said a single unexplained significant difference compelled a finding of a different writer, a position I consider as a bit overdoing it. Still, Runyon seemed to have found several such significant differences but might not have expressed them as concisely and strongly as she might have. This is not offered as a criticism of Runyon, since I suspect the case report was written to justify the finding in favor of forgery. I would believe most document examiners have suffered such to happen to the best of their exposures of forgery.

## *2. Minnesota Supreme Court.*

### 1999

606. *State v Bauer*, 598 N.W.2d 352, 1999 Minn. LEXIS 452 (Minn. 1999)

At page [\*11]: “A handwriting expert from the BCA testified that while appellant could not be identified or excluded as the author of the note attached to the brick, it was ‘probable’ that Tran did not write the note.”

COMMENTARY: Appellant/defendant’s conviction of murdering his estranged wife was affirmed. The note and brick had been thrown through the victim’s window before the murder. Tran was a man with a violent past who was suggested as the murderer by the defense. BAC is Bureau of Criminal Apprehension.

### 2001

607. *State v Sessions*, 621 N.W.2d 751 (MN 2001)

At page 754: “The trial court read to the jury the parties’ stipulation that, if called, a forensic document examiner would testify that the checks that Haynes and Knoebel cashed were not written by Allen, Haynes or Knoebel. The expert also would testify that the writings on the face of the checks included numerous significant similarities to appellant’s writing samples and that it is highly probable that appellant wrote those checks.”

COMMENTARY: The stipulation was equivalent of the expert’s appearing in court personally and testifying under oath to the stated opinion. It might be considered an acknowledgment of the expert’s quality as a witness because the defense especially fears the impact.

## 2004

608. *Ture v State*, 681 N.W.2d 9, 2004 Minn. LEXIS 312 (Minn. 2004)

“A handwriting expert for the BCA testified at Ture’s trial that the signatures on each page of the confession were [\*5] Ture’s.” It was a confession to the murder of the victim.

COMMENTARY: A case of routine admissibility.

## 2005

609. *State v Martin*, 695 N.W.2d 578, 2005 Minn. LEXIS 267 (Minn. 2005)

A handwriting expert identified defendant’s partner in crime, Young, as writer of handwritten notations on instructions to the murder victim’s residence.

COMMENTARY: A case of routine admissibility.

## 2006

610. *State v Young*, 710 N.W.2d 272, 2006 Minn. LEXIS 99 (Minn. 2006)

This is the same murder case, but separate trial, as *State v Martin*, 695 N.W.2d 578., cited above. The same handwriting expert testimony was given.

COMMENTARY: A case of routine admissibility.

## 2009

611. *In Re Petition for Disciplinary Action against Patricia Jean Ryerson*, 760 N.W.2d 893, 2009 Minn. LEXIS 29 (Minn. 2009)

In a disciplinary action against an attorney, a forensic document expert testified that there was “a strong probability” that clients’ signatures on a variety of documents were false. He explained that by “American Standards of Testing & Materials” “a strong probability” meant that the examiner was “virtually certain.”

COMMENTARY: Though the name is incorrect, this case gives another judicial nod to ASTM terminology.

## X. MISSISSIPPI CASES.

### *1. Mississippi Courts of Appeal.*

## 1992

612. *Rogers v State*, Court of Appeals, Mississippi, No. 92-KA-01170 COA, 1992

State “disclosed that Frank Hicks, a handwriting expert, would be called to establish that a handwritten check list concerning the murder of the victim and the disposition of the body and evidence may have been written by Rogers.” It was not error that Trial Court denied Rogers’ *in limine* motion to exclude the testimony since it was not speculative. Hicks had explained all

aspects of his opinion and “noted certain discrepancies in the handwriting samples and explained how these affected his conclusion.” An expert opinion need not be beyond a reasonable doubt, only the State’s case need be. The testimony was above the level of mere speculation and was helpful to the jury in understanding the evidence.

COMMENTARY: The testimony was clearly found to be reliable, and it is intimated that the cautious expression of the opinion enhanced its reliability. I cannot recall a case report where the expert handwriting witness is described as giving such intelligent consideration to contrary indicators. It ought to be standard practice to delineate contrary data, but too often the contrary is summarily dismissed as inconsequential even by the presumably objective expert.

## 2000

613. *Alexander v State*, 759 So. 2d 411, 2000 Miss. LEXIS 104 (MS 2000)

Convicted of capital murder and sentenced to life without parole, among other errors appellant argued that the State’s handwriting expert, A. Frank Hicks, had improperly used letters Alexander wrote to his wife as exemplars. However, the Supreme Court of Mississippi states in its ruling: “P34. While the admission of any information contained in Alexander’s letters [\*24] to his wife would have posed a privileged communication problem, the expert’s mere reliance on the letters for handwriting purposes poses no such evidentiary bar. In the latter instance, the expert is not concerned with the actual information contained in the letters; rather, he is concerned with the manner in which the letters and words are formed--the actual handwriting. The content of the privileged letters was not introduced into evidence; and therefore, there was no violation of M.R.E. 504(b). Though unnecessary, the essence of the problem was avoided when the handwriting expert altered his testimony to express opinions unrelated to the documents in question. Today’s ruling is consistent with other jurisdictions. [Citations omitted.]”

COMMENTARY: This is a good example of adjustment to avoid a potential problem as well as authority for use of privileged material in a way to respect the privilege.

## 2001

614. *Young v State*, 791 So. 2d 875, 2001 Miss. App. LEXIS 275 (MS App 2001)

Convicted on two counts of uttering a forgery, Young contended it was never proven beyond a reasonable doubt that he knew the two checks in question were forged. He had endorsed them with his signature and identification data. Frank Hicks, a forensic document examiner, also referred to in the report as a “forensic scientist,” testified that neither the victim nor Young wrote on the face of the check. He said that Young’s girl friend may not have done so, but that her exemplars had indications of disguise.

COMMENTARY: This is a case of routine admissibility in which an opinion regarding disguised handwriting was received. Also, the Court of Appeals refers to the handwriting expert as a “forensic scientist.”

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2010

615. *Mapp, et al., v Chambers*, 25 So. 3d 1096 (MS Ct. App. 2010)

“¶¶ 10. Frank Hicks testified, by deposition, as a forensic document examiner. Hicks expressed his opinion, to a reasonable degree of probability in the field of forensic document examination, that the signature on the deed was that of Marilyn. However, in his deposition Hicks stated that he did not have enough known signatures to determine the writer’s full range of variation. He went on to testify that he did not have any signatures that were contemporaneous with the date on the questioned document.”

The trial court decided to the contrary which was affirmed on appeal. The reasoning by the trial court for discounting Hicks’ opinion is stated thus:

“¶¶ 26. The chancellor then considered the deposition of Hicks, who was accepted as an expert in the field of forensic document examination. Hicks’s determination was that the signature of Marilyn was prepared by the same person, but his testimony falls short of a ‘virtually certain’ degree of confidence. The chancellor found that Hicks was essentially questioning his own opinion. The chancellor determined, based on Hicks’s deposition, that Hicks did not form a conclusive opinion on whether the signature on the deed belonged to Marilyn.”

COMMENTARY: I quote both passages concerning Hicks in order to illustrate that an expert witness cannot guess what part of one’s testimony the fact-finder will ignore or what part build into an evaluation that the expert would most likely not agree with.

## *2. Mississippi Supreme Court.*

2000

616. *Logan v State*, 1999 Miss. App. LEXIS 182; affirmed in part and reversed in part, 773 So. 2d 338; 2000 Miss. LEXIS 267.

1999 Miss. App. LEXIS 182:

“P32. In the instant case, the prosecution had over seven months from the time they seized the evidence until trial to obtain a handwriting analysis. However, the State waited until several weeks before the trial was scheduled to begin to obtain a handwriting examination. Burkes testified that he completed his report on September 9, 1996 and had discussed the results of this examination with Investigator Jim Smith before this date. The State did not disclose this information or list this witness until September 20, 1996, after business hours and two working days prior to trial. This insufficient notice, which also violated the discovery rules, did not allow Logan enough time to have an expert review the report and examine the same original documents and exemplars. Furthermore, these necessary documents were never presented to Logan at any time. Therefore, this assignment of error is well taken.” For this and other errors, Logan’s conviction was reversed and the case remanded for a new trial.

2000 Miss. LEXIS 267:

“P40. When witnesses other than the defendant are available to refute the State’s evidence, and these witnesses are not placed on the stand, this Court, in prior cases, has held that comments similar to those about which Logan now complains do not constitute reversible error. *Conway*,

397 So. 2d at 1100 (citing *Clark v. State*, 260 So. 2d 445 (Miss. 1972)).

“P41. With regard to the assertion that he presented the vehicles for inspection in Brookhaven, Logan could have produced alibi witnesses testifying that he was elsewhere at the times he was allegedly in Brookhaven. He could have also produced handwriting experts to testify that the handwriting on the applications was not his own. With regard [\*27] to the rivets, Logan could have produced experts in the field of metallurgy to refute Luke’s contention that the rivets were home-made, and not factory originals.”

This was a reversal of the Courts of Appeal finding of error, but other errors, as the one regarding the handwriting expert testimony, were not reversed and so the remand for a new trial was upheld.

COMMENTARY: I have not seen a later case report as to whether or not Logan was convicted on the retrial.

## 2001

617. *Burns v State*; conviction and death penalty affirmed, 729 So. 2d 203 (MS 1998); motion for post conviction relief, granted in part, denied in part, 813 So. 2d 668, 2001 Miss. LEXIS 252 (MS 2001)

### 729 So.2d 203:

At page 218: “Ted Burkes, a document examiner with the State Crime Lab, testified that the letters written to Kohlheim were ‘probably prepared’ by Burns and that a comparison of the signatures on the letters and the known sample revealed a ‘strong probability’ that they were written by the same person....”

### 2001 Miss. LEXIS 252:

To obtain exemplars to compare to two letters admitting to the murder charged, the sheriff told defendant to write a list of names of visitors he wanted. Appeal on basis of deception in obtaining the exemplars was to no avail, since “if there is no Fourth Amendment privacy expectation in handwriting, there is no constitutional violation involved in not being entirely truthful in obtaining it.”

COMMENTARY: An outright lie is described as ‘not being entirely truthful.’ True enough, the entirely deceitful is not entirely truthful. Post conviction review of this issue was denied.

## 2004

618. *Todd v State*, 806 So.2d 1086 (Miss. 2001); denial of post-conviction relief affirmed, 873 So.2d 1040 (Miss. 2004)}

806 So.2d 1086, on pages 1095-96: “On the record before us, we conclude that the trial court did not abuse its discretion in disregarding the testimony of Lillian Hutchison, particularly in light of the trial court’s stated concerns about her qualifications and her own admission that she only compared the letter to photocopies of E.K.’s handwriting rather than originals.” Conviction was upheld.

873 So.2d 1040, on page 1042: “During post-trial motions, Todd again tried to authenticate the letter purportedly written by E.K., both through the expert testimony of handwriting analyst



Lillian Hutchinson who claimed that the letter was certainly written by E.K. and by challenging the testimony of Timmy Hester, Jimmy's twin brother, who claimed to have faked the letter by tracing other writings of E.K. The State introduced a report of a documents examiner from the Mississippi Crime Lab which stated the opinion that portions of the letter were indicative of tracings and simulation although authorship could not be conclusively determined."

COMMENTARY: The case report uses both spellings of Lillian's last name. Todd must have believed the old adage: "If at once you don't succeed, try and try again." Except on the second try the "don't succeed" was even further from success thanks to the State's document examiner.

## 2010

619. *Spectrum Oil, LLC v West, et al.*, 34 So. 3d 1213 (MS Ct. App. 2010)

The entirety of the expert testimony that is transcribed in the case report is:

"A forensic document examiner testified about his review of the document. After his testimony, the chancellor gave his version of what the entry said and asked the expert if he agreed. The following exchange transpired:

"THE COURT: Let me give you my version of what it says. You tell me whether you agree with it or not. It says Roy Robert Davis, September the 8th, 1908. Then, under it there is a line and 9 dot 8 dot 1908.

"A. [the forensic document examiner]: That is what I believe. The same thing.

"The expert told the chancellor that the handwriting of the name and of the date 9.8.1908 was made by the same hand."

COMMENTARY: It is always reassuring when the judge verifies whether or not your explanation was properly understood. Then there are the times when you read a ruling, argument by counsel, case report or some news source, and you do not even recognize the opinion credited to you.

## Y. MISSOURI CASES.

### *1. Missouri Courts of Appeal.*

## 1996

620. *McMillan v First State Bank of Joplin*, 935 SW 2d 329 (MO Ct. App. Southern Dist. 1996)

The third and last sentence of the first footnote gives the entirety of the report concerning expert handwriting testimony: "She [plaintiff] also presented testimony from a document examiner that the endorsements on the CD's were not written by her."

COMMENTARY: This is another case where the expert's testimony is shown to be nearly inconsequential in the mind of the courts.

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## 2001

621. *Kassebaum v Kassebaum*, 42 S.W.3d 685; 2001 Mo. App. LEXIS 170 (Mo. Ct. App. Eastern Dist. 2001)

A handwriting expert testified that defendants' signatures on a deed in question were false. Plaintiffs prevailed.

COMMENTARY: A case of routine admissibility.

## 2005

622. *Boroughf v Bank of America, et al.*, 159 S.W.3d 498; 2005 Mo. App. LEXIS 469 (Mo. Ct. App. Southern Dist. 2005)

Boroughf's handwriting expert, Don Lock, testified he could not give a definite opinion that the signature of decedent was genuine on an amendment to a trust since he only had a photocopy, but there were no unexplainable dissimilarities. The trial judge did not admit the amendment into evidence since it was not shown either that the original was unavailable or that the copy was a true copy of the original.

COMMENTARY: Lock gave a properly qualified opinion out of which plaintiff wanted to make a greater certitude than the expert opinion itself would permit.

623. *Stromberg v Moore, et al.*, 170 S.W.3d 26; 2005 Mo. App. LEXIS 988 (Mo. App. Eastern Dist. 2005); transfer denied, 2005 Mo. LEXIS 380 (Mo., Sept. 20, 2005)

A draft with Stromberg's forged signature was deposited in a bank of which he was not a customer. When he first learned of the forgery, he notified the bank, but they refused to return the draft and the funds to him. Handwriting expert, William Storer, testified that it was his opinion the signature of Stromberg was not genuine. The trial court's rulings in Stromberg's favor were affirmed.

COMMENTARY: A case of routine admissibility.

## 2006

624. *In the Estate of George J. Goldschmidt*, 215 S.W.3d 215; 2006 Mo. App. LEXIS 1977 (Mo. Ct. App. Eastern Dist. 2006)

A handwriting expert testified that Decedent's signatures establishing a pay-on-demand account were genuine, and that was the court's finding.

COMMENTARY: A case of routine admissibility.

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## 2007

625. *Perkins, et ux., v Dean Machinery Company*, 132 S.W.3d 295; 2004 Mo. App. LEXIS 639 (Mo. Ct. App. Western Dist. 2007); appeal after remand, 2007 Mo. App. LEXIS 27 (Mo. Ct. App. 2007)

Defendant recorded documents perfecting its security interest in a bulldozer it had repaired for plaintiffs, who denied signing the documents. At [\*5]: “The Perkins presented a handwriting expert, William Storer, at trial. n1 The expert determined that the signatures on the documents ‘definitely’ were not written by Lowell Perkins and concluded that the signatures were forgeries. Defendant Dean was precluded from presenting its own expert, although it had intended to do so, because it failed to supplement discovery before trial by identifying the expert. Defendant Dean also waived all cross-examination of the plaintiffs’ expert. Therefore, the testimony of plaintiffs’ expert remained unimpeached, uncontradicted and unchallenged.”

Footnote 1: “The expert had been a document examiner for forty-two years; held Bachelor’s and Master’s of Science degrees; apprenticed with the St. Louis Police Laboratory; was board certified by the American Board of Forensic Document Examiners; had taught at the college level and recently published a college textbook; and has his own private practice, with clients that include the police departments and prosecutors’ offices in St. Louis and Jackson County.”

The report has replies to several arguments by defense against the handwriting evidence. One of these is stated thus by the appeal court: “We fail to see that it is necessary for the Perkins to prove the identity of the exact individual who performed the forgery, nor do we know whether it would even be possible to prove such identity.”

COMMENTARY: The trial judge had denied trial on punitive damages, but the case was reversed and remanded solely on this issue. The assurance of the handwriting expert evidence supported the remand. The case report is recommended reading for the various critiques of defendant’s argument against the cogency of the handwriting evidence.

626. *Williams v State*, 226 SW 3d 871 (MO Ct. of App. 2007)

William Storer identified defendant as having filled out an insurance application.

COMMENTARY: A case of routine admissibility.

## 2009

627. *Farmers State Bank of Northern Missouri v Huffaker*, 2009 Mo. App. LEXIS 442 (MO App. 2009)

Mrs. Huffaker objected to admission of Mr. DeShon, a lay witness to her handwriting, but this was upheld on appeal. She did no better objecting to the bank’s expert.

“Mrs. Huffaker makes several arguments in support of her claim that the trial court erred in overruling [\*10] her objection to the testimony of Mr. Storer. She contends that Mr. Storer’s testimony was inadmissible because: (1) the identification of handwriting is not a proper subject for expert testimony in that the subject is within the knowledge of lay witnesses, (2) there was no evidence that the material he relied on was the type of material that is reasonably relied on by experts in his field, (3) there was no evidence to establish that the exemplars used in Mr. Storer’s

comparisons contained Mrs. Huffaker's signature, and (4) Mr. Storer impermissibly relied on Mr. DeShon's opinion...."

COMMENTARY: The Court of Appeals said all four objections to Mr. Storer had been satisfied, and so he was properly permitted to testify. The case notes that there is legal authority in Missouri for admission of expert handwriting evidence.

2012

628. *State v Christian*, 364 S.W.3d 797 (E) (MO Ct. App. S.D. 2012)

"A statement and signature by King were submitted to handwriting expert Don Lock ('Lock'), along with Christian's signature on a statement that he wrote for the sheriff's office, and the signature on the deed that purported to be King's. Lock testified that the signature on the deed purporting to be King's was 'nongenuine'; i.e., it had not been made by King. Lock also compared Christian's known signature to the signature on the deed purporting to be King's, and he testified that '[e]verything points towards Christian as the writer of the nongenuine signature with no unexplainable differences [and] . . . nothing points away from him as a possible writer.'"

COMMENTARY: It must have been a spurious forgery, one in which the forgery is written in the forger's own genuine style without any effort to imitate the purported writer's style. Otherwise, there would have been something not pointing to Christian, nor would the signature pass muster at the least inspection by an amateur having access even to one genuine signature by King. Further, on the face of it the case report suggests that only one signature by King was submitted for comparison, and that hardly meets the minimal standards in the discipline. On the other hand, this might be one of the many case reports that leave out what some of us would consider essential information for support of the decision.

## *2. Missouri Supreme Court.*

1999

629. *State v Armentrout*, 8 S.W.3d 99; 1999 Mo. LEXIS 80 (Mo. 1999); certiorari denied, 2000 U.S. LEXIS 3350 (US 2000)

"First, Appellant claims that the trial court erred by allowing the state's handwriting expert, William Storer, to testify in the guilt phase that a tremor was evident in some of the victim's last signatures. Appellant argues that the reference to the tremor (supposedly indicating nervousness or fright) should have been excluded because the state failed to disclose it before trial. Appellant acknowledges, however, that he did not raise this claim during his trial and that it was raised for the first time in his motion for new [\*28] trial. As noted, to obtain plain error relief, Appellant must demonstrate manifest injustice or a miscarriage of justice. *Rule 30.20*. Here, appellant has suffered no manifest injustice because he has not shown that earlier discovery would have caused him to act differently and would have affected the outcome of his trial. *State v. Mease*, 842 S.W.2d 98, 108 (Mo. banc 1992) ('the focus of a denial of discovery is whether there is a reasonable likelihood that denial of discovery affected the result of the trial.'). *cert. denied*, 508 U.S. 918, 124 L. Ed. 2d 269, 113 S. Ct. 2363. The point is denied."

COMMENTARY: Defendant had represented himself at trial, and his appeal could be viewed as a series of complaints that he had had inadequate legal representation.

## Z. MONTANA CASES.

### *1. Montana trial courts.*

#### 2000

630. *Maxwell v Hoven, et al.*, 2000 ML 3878, 2000 Mont. Dist. LEXIS 1606 (Cascade Co. Mont. 2000)

The following is copied from the case report:

#### FINDINGS OF FACT

1. In January of 1998, Plaintiff Maxwell delivered his vehicle, a 1989 Hyundai Excel ("the vehicle"), to Defendant Curtis Olsen, sales manager for Defendant Hoven d/b/a Aladdin Auto Sales ("Aladdin") for Aladdin to sell on consignment.
5. Upon checking with the Department of Motor Vehicles, Plaintiff learned that the vehicle had been sold and title transferred utilizing a forgery of Plaintiff's signature. The Plaintiff's purported signature includes a verification by notary Mitch Posey, defendant herein.
13. Steven Maxwell's signature on the title is certified as Mr. Maxwell's by notary signature of Mitch Posey, notary public....
14. The signature of Mr. Maxwell on the Certificate of Title does not resemble in the least the signature on the consignment agreement. It is clear that Mr. Maxwell's signature was forged with no effort to make it appear to be his actual signature.
15. The signature of Mr. Posey, on the Certificate of Title, appears to be in many ways similar to the signature of Mr. Posey on his notary public bond, which he verified to be his signature.
22. Even though Posey did not raise the affirmative defense in his pleadings as required by Rule 8(c), M.R.Civ.P., I chose to allow him to assert that defense at trial.
25. Posey's handwriting expert, Ron Ashabraner, raised questions about [Posey's] signature's authenticity, and found what he believed to be some significant differences between his signature and that on the document. He was unable to testify with any certainty or by a preponderance of the evidence, that the signature is or is not Mr. Posey's, because he claims the characteristic features of the signature would only be revealed by the original document and would not be apparent on this photocopy.
26. Posey did not meet his burden of proving his signature was forged.
28. Plaintiff Maxwell met his burden of proving by a preponderance that Posey notarized the signature purporting to be Maxwell's signature on the Certificate of Title and that Maxwell's signature had been forged.

COMMENTARY: I enjoyed this little melodrama.

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## 2. Montana Supreme Court.

### 2001

631. *State v White*, 2001 MT 149, 306 MT 58, 30 P3 340, 2001 MT LEXIS 304 (MT 2001)

White was convicted for the felony forgery of three checks. Among other bases for a claim of ineffective assistance of counsel, appellant White listed her trial counsel's failure to call a handwriting expert to rebut the State's expert. At [\*12] the Supreme Court of Montana explains why it rejects this and other claims of ineffective assistance: "We also have a record that cannot fully explain why a rebuttal witness was not called to counter the State's handwriting expert--where perhaps counsel's chosen tactic was simply to rely on cross-examination. We hold that the foregoing claimed deficiencies are categorically non-record based, and therefore cannot be reviewed on direct appeal."

COMMENTARY: The decision seems to imply that, as long as trial counsel who is guilty of the most ineffective assistance avoids indicating on the record the reason for every ineffective non-action, the assumption is that there was a most effective reason for the ineffective assistance which thus becomes sufficiently effective.

State handwriting expert at trial was Beverly Medved, member of American Board of Forensic Examiners, but the report does not mention Medved's name.

### 2005

632. *Garrett, F/k/a White, v State*, 2005 MT 197, 328 Mont. 165, 119 P.3d 55, 2005 Mont. LEXIS 352 (Mont. 2005); affirming *State v White*, 2001 MT 149, 306 Mont. 58, 30 P.3d 340, 2001 Mont. LEXIS 304 (Mont. 2001)

"Garrett argues that Gilligan's representation was ineffective because he failed to retain a handwriting expert for the defense. Garrett notes that she urged Gilligan to hire a defense expert and offered to advance \$1,500 to obtain one. Garrett also asserts that Gilligan failed to interview the State's handwriting expert Beverly Medved (Medved). Garrett contends that Gilligan's cross-examination was 'not effective enough' to undermine Medved's opinion, which prejudiced [\*10] the outcome of the trial. The State replies that Gilligan prepared for Medved's testimony based upon Medved's written report, anticipated her testimony, and effectively cross-examined Medved at trial by limiting the scope of her testimony to certain exhibits.

"In her civil deposition, Garrett admitted to making alterations to the documents at issue, and she did not deny that alterations were made in her criminal trial. Thus, both sides acknowledged the alterations by Garrett, and, therefore, a handwriting expert was not needed to establish that Garrett had altered the documents. Moreover, there is no evidence in the record to suggest that Gilligan could have engaged an expert with contrary opinions to the State's expert. Consequently, we conclude that it is not established that Gilligan's performance fell 'below the objective standard of reasonableness.' *Lucero, P 15.*"

COMMENTARY: One wonders at times whether appeal attorneys take their own arguments seriously. Even if a handwriting expert were the world's premier hireling, he would hardly testify that his own client is mistaken when confessing to fraudulently altering documents. At least such

facetious bases for appeals contribute to keeping otherwise idle appeal attorneys gainfully employed, being their gain and the taxpayers' drain.

633. *State v Clifford*, 2005 MT 219, 328 Mont. 300, 121 P.3d 489, 2005 Mont. LEXIS 385 (Mont. 2005); 2005 Mon. 219, 2005 Mont. LEXIS 421 (2005); rehearing denied, 2005 Mont. LEXIS 425 (2005); post conviction review denied, *Clifford v State*, 2006 Mont. Dist. LEXIS 264 (2006)

Conviction for writing letters to tamper with or fabricate evidence and for writing threatening letters was affirmed. Before discussing the decision by the Montana Supreme Court, a survey of the procedural history will show the handwriting issues and how protracted the case was.

At 2001 ML 3671, 2001 Mont. Dist. LEXIS 3091, it is reported that Howard C. Riles and Lloyd Cunningham were designated defense document examiners. The latter said he needed all documents in his lab at once, so the trial court ordered the State to make them available.

At 2002 ML 708, 2002 Mont. Dist. LEXIS 2920, defense asks the court to order the State to search personnel files of its witnesses. The order is granted except for James A. Blanco, designated document examiner for the State, since his employment was with the Federal Government and the State had no access to those personnel records.

At 2002 ML 710, 2002 Mont. Dist. LEXIS 2922, defense requests a *Daubert/Kumho* hearing on admissibility of James A. Blanco. In Montana, *Daubert* applies only to novel scientific evidence, so the request is denied.

At 2002 ML 711, 2002 Mont. Dist. LEXIS 2933, defense moves to redact Blanco's opinions and conclusions from the affidavit and the information be dismissed. For the same reasons why the *Daubert* hearing was denied the motion to redact is denied and, therefore, the motion to dismiss.

2002 ML 712, 2002 Mont. Dist. LEXIS 2924, defense moves for reconsideration of order to provide handwriting exemplars. The deposition of Blanco was permitted wherein he was asked about having any exemplars. The prosecutor, therefore, sought an order for more exemplars to be used at trial because of the anticipated challenge. Motion for reconsideration was denied.

At 2002 ML 2421, 2002 Mont. Dist. LEXIS 1999, defense motion *in limine* to exclude Blanco's testimony is denied for reasons given previously on similar motions.

At 2002 ML 2571, 2002 Mont. Dist. LEXIS 3002, motions were made to continue and to dismiss because defense did not have information on how Blanco arrived at his opinions. The State supplied them with all his reports, and when he was deposed defense examiner still had the documents so they were unavailable to Blanco. The court found that Blanco's reports supplied all required information. Other reasons were given for the motions, so trial was ordered to proceed as scheduled.

And that brings us to the decision by the Montana Supreme Court of 2005. In March 2000, William Cordes, to whom "the United States Secret Service had given him questioned-documents-examination training," was assigned to investigate documents in the case. He developed a good amount of evidence against defendants.

Blanco was first contacted by the Lewis and Clark County Sheriff's Office in December 1998. He was one of about 150 certified by ABFDE, "the only certification recognized by crime laboratories in the majority of governmental agencies.... In his first of five reports, Blanco could

neither identify nor eliminate” defendants as writers of the anonymous letters. With more documents, he identified Cheryl Clifford as the writer of some letters and envelopes. At his deposition Blanco “was not prepared to explain every detail of every comparison between the letters.” Seemingly he did much better at trial.

Five of seven issues raised on appeal directly related to handwriting evidence.

At [\*10]: “In presenting her defense, Cheryl intended to call Mark Denbeaux as a handwriting expert. The State objected, and the District Court excluded him.” She wanted him to criticize handwriting analysis evidence. He was not a handwriting expert, the district court was well within its discretion, and Cheryl could have developed the same challenge through cross-examination of her own handwriting expert.

No *Daubert/Kumho Tire* hearing was required since in Montana *Daubert* applies only to novel scientific evidence. The expert may give an opinion as to the ultimate issue, namely who wrote the letters in question and not be restricted to explaining similarities and differences. The issue as to Blanco’s qualifications was not preserved for appeal since there was no objection at trial. The Court did not consider the claim that Blanco’s opinion did not provide probable cause to support the information because the claim was nothing more than an assertion. The defense was supplied with ample material regarding Blanco’s opinion and its bases, so there was no error in denying continuance or dismissal. Cheryl fails to develop argument or cite authority that it was error to deny a continuance so that Lloyd Cunningham, who was recovering from an illness, could testify in person rather than by video deposition.

Cheryl claims error because she was not permitted to present proof that someone else wrote the anonymous letters. The government claimed it would be “unfair prejudice” to it, but that is only possible “when the evidence tends to make the jury more likely to find a defendant not guilty *despite* the proof beyond a reasonable doubt.... By proving that someone else committed the crime, reverse 404(b) evidence is not likely to generate that risk of jury infidelity, and [\*24] thus does not generate unfair prejudice.” It would have been inadmissible propensity evidence.

COMMENTARY: At Blanco’s deposition, the defense attorney seemed to have given away challenges to be made a trial. That is always a major tactical error. Additionally, defense was holding on to documents Blanco needed to provide some information at the deposition. Another poor tactic by defense attorney. Calling Denbeaux to show weakness of expert handwriting evidence would have weakened Cunningham’s testimony as much as Blanco’s, so barring Denbeaux prevented self-defeating defense tactics. Since only 150 or so “experts” were then certified by ABFDE, the situation of “major” agencies only recognizing ABFDE certification seems to be a case of ABFDE people only recognizing themselves, given the vast extent of the profession in North America. Neither the government investigator, Cordes, nor defense expert Cunningham hold this self-recognized certification, while Riles does. So the “experts” in the case were split 50/50 unless one considers Denbeaux one of the experts, then the allegedly “only recognized” experts are in a minority, as they are at large among the thousands of court qualified document examiners in North America.

One might explore other ironies in this case, but for our purposes admissibility is soundly supported by testimony by both “recognized” and “unrecognized” handwriting experts, while once more the expert against handwriting expertise is dismissed for not being a handwriting



expert. As I have stated previously and shall surely state again, only a handwriting expert with a special competence can assist an attorney in exposing incompetent handwriting expertise.

## AA. NEBRASKA CASES.

### *1. Nebraska Courts of Appeal.*

#### 1998

634. *State v Ebert*, Nebraska Court of Appeals, Filed November 3, 1998, Nos. A-97-821, A-97-822.

“Additionally at trial, Robert Citta, a latent-fingerprint examiner and handwriting analyst...compared Ebert’s handwriting to that on the checks and concluded that the handwriting on the three checks was not Ebert’s. However, he determined that it was possible that the handwriting on the three checks was Matt Jones’.” The handwriting evidence was not assigned as error on appeal.

COMMENTARY: Those who do not know how genuine knowledge works upon a reliable methodology might think the expert in this case was inept. However, a true expert knows the limitations of the discipline as well as personal limitations. That in this case the prosecution introduced at least partially exculpatory evidence speaks well for both the prosecutor and the expert. In any case, it seems all parties found the expertise sound enough not to be challenged.

#### 1999

635. *Darnall and Darnall v Petersen and Petersen*, 8 Neb. App. 185; 592 N.W.2d 505, 1999 Neb. App. LEXIS 88, 39 U.C.C. Rep. Serv. 2d (Callaghan) 140 (Neb. App. 1999)

“Albert Lyter, III, a forensic chemist, was called to testify on behalf of the Darnalls. Lyter has a bachelor’s degree in chemistry and biology and a master’s degree in forensic science. Prior to opening his own business in 1981, Lyter worked for the U.S. Treasury Department in the Bureau of Alcohol, Tobacco, and Firearms laboratory.

“Lyter conducted both physical examinations and chemical tests on the promissory note. Based upon his physical examinations of the document and the chemical tests performed, Lyter opined that the terms of the document were all written during the ‘same time period.’

“During cross-examination, Lyter testified that depending on the ink, ‘same time period’ could be a matter of days. Lyter further acknowledged that if the same pen was used to write the initial terms of the [\*6] document and then later used to add the additional terms, then, depending on the circumstances, there might be a situation where he could not detect an alteration made 6 months later. However, he reiterated that based upon the fact that the same ink was used and the fact that he found no differences in the relative dryness of the ink, ‘the simplest conclusion is that they were all done at the same time.’

“Andrew Bradley, a document examiner, was next called to testify. Bradley worked as a document examiner for the Arapahoe County Sheriffs Department from 1968 through 1993. Bradley has also done work for the Secret Service and the Federal Bureau of Investigation.

Bradley examined the handwriting on the promissory note using microscopic equipment.

“Based upon a reasonable degree of forensic certainty, Bradley opined that all of the terms of the promissory note were written by the same person at the same time. During cross-examination Bradley admitted that he could not rule out that some of the terms were written at a different time but stated that based upon his experience and training, he believed that they were written at the same time.”

The Trial Court found contrary testimony more credible and this finding was upheld by the Court of Appeals, that the entries in question were added after the document was signed and without the authority of Ms. Petersen. However, since the addition was not fraudulent, it was a Pyrrhic victory for Ms. Petersen.

COMMENTARY: No indication is given for the bases why both experts thought that plaintiffs’ contention that all entries were made at the same time was more likely than defendants’ contention that some were made days later. It seems to me that opinions ultimately based on the expert’s experience and training are not based on any facts originating from the instant case.

## 2003

636. *Freimuth v Principal Mutual Life Insurance Company*, 2003 Neb. App. LEXIS 245 (Neb. Ct. App. 2003)

At [\*7]: “Freimuth also called Sylvia Kessler, a handwriting expert, to testify. Kessler testified that after analyzing and comparing samples of Holdsworth’s and Freimuth’s signatures with the questioned signature on the CSR, it was her opinion that the signature on the CSR was made by Holdsworth. She further testified that she could not find anything in Freimuth’s signature that would indicate that he signed Holdsworth’s name on the CSR and that thus, it was her opinion that Freimuth did not author the questioned signature.”

COMMENTARY: challenged the admissibility of an economics expert but not that of the handwriting expert. Ms. Kessler is a member of NADE.

## 2004

637. *State v Ruffin*, 2004 Neb. App. LEXIS 335 (Neb. App. 2004)

At [\*15]: “Ruffin asserts that the district court abused its discretion in granting the State’s motion to endorse an additional witness. Specifically, Ruffin complains that the court erred in granting the State’s motion to endorse Pamela Zilly of the Nebraska State Patrol crime laboratory, an expert in handwriting analysis, as a witness only 13 days prior to trial.” By rule witnesses in criminal trials should be disclosed 30 days prior to start of the guilt phase. However, no continuance was requested nor objection made by Ruffin.

Ruffin filed a *Daubert* motion: “The district court heard Ruffin’s motion *in limine* on January 6, 2004, outside the presence of the jury. The State presented testimony from Zilly concerning handwriting analysis in general and her analysis of Ruffin’s handwriting in particular. [\*19] At the conclusion of Zilly’s hearing testimony, the court found that the State had met its burden of proof concerning the scientific validity of the handwriting analysis and denied Ruffin’s motion.

At trial, the State subsequently presented testimony from Zilly concerning her analysis of Ruffin's handwriting and her conclusions therefrom. Ruffin did not object to any of Zilly's trial testimony or to any of the exhibits received into evidence during her testimony concerning her handwriting analysis."

COMMENTARY: Zilly must have prepared well and explained thoroughly to triumph over the challenge to her reliability and to the validity of her expertise. Unfortunate this is not a published case and does not cite relevant published cases. The poor performance of defense counsel is credited to Ruffin personally, as if he had conducted his own defense. However, if he had appealed on basis of inadequate assistance of counsel, typically the bungling performance would most likely be credited to shrewd trial tactics or strategy.

## *2. Nebraska Supreme Court.*

### 2002

638. *Hradecky v State*, 264 Neb 771, 652 NW2 277, 2002 Neb LEXIS 215 (Neb 2002)

This is two cases of husband and wife each appealing from judgment in the trial court. At page [\*9], one point of appeal alleged was "multiple and cumulative errors that resulted in the denial of a fair trial," the last of seven alleged instances being: "(g) refusing to permit the Hradeckys to cross-examine a State expert on her adherence to the discipline of graphology." There was no error in that refusal by the Trial Court.

At [\*11]: "The February 25, 1998, entry from Sterling's work diary was admitted as an exhibit at trial. The diary includes an entry that Sterling closed the eastbound 1-80 entrance at Kimball at 8:30 a.m., although the '8' is written very boldly and there appears to be text underneath it. Both parties offered expert testimony on the issue of whether the ink used to make the '8' was consistent with other ink on the page and what the text underlying the '8' was. The Hradeckys' expert testified that different ink was used to make the '8' and that the underlying text was the number 10. The State's expert agreed that different ink was used on the '8' but found that different ink was also used on other entries in the diary on the same day. The State's expert disagreed that the underlying text was a 10 and opined that she could not determine what the text represented." The Trial Court found that the husband had driven onto a closed roadway during a blizzard and thus was grossly negligent.

COMMENTARY: No challenge to the reliability of the expert evidence is reported. The state employed an expert with background in graphology, which was irrelevant to expertise in questioned documents, since cross-examination about it was barred. The only handwriting opinion reported is that of decipherment of the underlying writing.

### 2007

639. *State v Wabashaw*, 274 Neb. 394, 740 N.W.2d 583, 2007 Neb. LEXIS 148 (Neb. 2007)

The State's handwriting expert compared a handwritten confession that Wabashaw denied writing with more than 26 known writings by Wabashaw. The expert concluded that Wabashaw wrote the confession. Wabashaw claimed ineffective assistance of counsel because his attorney

did not engage the expert for which the trial court allowed funds, but there was insufficient information to determine that.

COMMENTARY: A case of routine admissibility.

## BB. NEVADA CASES.

### *1. Nevada Supreme Court.*

#### 2000

640. *Evans, as Special Administrator of the Estate of Elfreda A. Gardner, v Dean Witter, et al.*, 116 NV 598, 5 P3 11043, 2000 Nev LEXIS 86, 116 NV Adv Rep 17 (NV 2000)

“Donald Brooks, manager of Dean Witter’s Stateline office, testified that on October 13, 1989, he and Jack Gardner witnessed Elfreda affix her signature to all of the opening account documents. Brooks also testified that he notarized Elfreda’s [\*6] signatures. However, two handwriting experts testified at trial that the signatures were not those of Elfreda, and that three different inks were used to execute the documents.”

COMMENTARY: A case of routine admissibility but hopefully not of routine fraud.

641. *Mulder v State*, 116 Nev. 1, 992 P.2d 845, 2000 Nev LEXIS 1 (NV 2000); certiorari denied, 2000 U.S. LEXIS 5432 (US 2000)

The “Case Details,” which are not the product of the Court, states the expert’s name as Howard Doulder, and “Discipline” as “Fingerprint Analysis, Forensic Doc. Examin., Handwriting Analysis.” However, it was someone whose work is 90% document examination and 10% fingerprints being presented at trial by defendant/appellant as a fingerprint expert to rebut FBI identification of defendant’s prints on duct tape. The Trial Judge found Doulder did not qualify as fingerprint expert but let him testify anyway. Appellant said it was error for Judge to say Doulder was not an expert since it reduced likelihood his testimony could raise reasonable doubt with jury. However, error was found because, having ruled him not an expert, the Trial Court let him give expert testimony. The error was in defendant’s favor so the error was harmless.

COMMENTARY: This case was retrieved because the source citing it listed it as a *Daubert* handwriting case. It is not, since no handwriting evidence was offered. Thus it is appropriate to repeat the caution about relying on a source’s representation of what a case report says without checking out the case report itself. The case offers a salutary warning about stepping outside one’s proper expertise.

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## 2003

642. *State v Bennett*, 119 Nev. 589, 81 P.3d 1, 2003 Nev. LEXIS 83, 119 Nev. Adv. Rep. 63 (Nev. 2003); writ of mandamus granted, *Bennett v Eighth Judicial Dist. Court of Nev.*, 121 P.3d 605, 2005 Nev. LEXIS 94 (2005); previously, motion on post-conviction petition, *Bennett v State*, 106 Nev. 135, 787 P.2d 797, 1990 Nev. LEXIS 21 (1990)

At [\*7], during the penalty stage: “The State also presented testimony of the officers who had executed the search warrants in the instant case and recovered witchcraft books, handwritten poetry or song lyrics discussing death and killing, and heavy metal music cassettes. A handwriting expert testified that the poetry or lyrics were in Bennett’s handwriting. He read some of the writings, such as ‘As I kill and kill again.’”

COMMENTARY: A case of routine admissibility.

## CC. NEW JERSEY CASES.

### *I. New Jersey appellate courts.*

## 2006

643. *Fitzgerald v Stanley Roberts, Inc.*, 186 N.J. 286, 895 A.2d 405, 2006 N.J. LEXIS 391, 98 Fair Empl. Prac. Cas. (BNA) 80 (NJ 2006)

“We turn finally to the handwriting analysis issue. Leman Lane denied that he ever signed plaintiff’s disability insurance forms although plaintiff and her mother testified that they saw him sign them. Defendants sought to admit the testimony of John Paul Osborn, a handwriting expert, who would have testified that Lane’s signatures on plaintiff’s insurance forms were probably forged (he could not testify that they were definitively forged because he did not have the original writings to compare). The trial judge excluded that testimony on the ground that it would take an excessive amount of time, and would result in a ‘little forgery trial within the sexual discrimination trial.’ We defer to the trial judge’s exercise of discretion in excluding the testimony under *N.J.R.E. 403* [\*62]. *Guenther*, supra, 181 N.J. at 155, 854 A.2d 308 (stating trial courts well-qualified to determine when admission of evidence will result in ‘mini-trial’ and to bar its admission due to confusion or waste of time). However, if this issue arises on remand, the trial judge should require and consider complete proofs to inform the balancing determination required under *N.J.R.E. 403*.”

COMMENTARY: I wonder how the myth became almost universal that a copy prevents a definite finding of falsity in handwriting. The rule as stated by Ordway Hilton and others is that even one significant difference that cannot be reasonably explained can, if sufficiently cogent, definitely prove falsity. If the difference(s) relied on cannot be credited to the copying process, the fact that one only has a copy cannot prevent a definite finding of falsity. This view is supported by *FBI Law Enforcement Bulletin*, 36:23-24, Feb. 1967, “Document examination from a photocopy.” Since then copiers have gotten much better, and recent research has shown more than 90% accuracy in observations based solely on photocopies.

2007

644. *Lyle Carlstrom Associates, Inc. v Lyle, et al.*, 2007 N.J. Super. Unpub. LEXIS 676 (Super. NJ App. 2007)

At [\*2]: “In 1995, Carlstrom’s brother left LCA and took some of its business with him. As a result, beginning in 1996, LCA required all of its employees, including defendant, to sign a non-compete agreement. Although defendant denied signing such an agreement, a photocopy bearing his purported signature was produced at trial, a handwriting expert testified the signature was defendant’s, and the jury found that he signed the agreement.”

COMMENTARY: A case of routine admissibility, though not a routine repetition of the fallacy regarding copies given in the previous item.

645. *State v Kuchera*, 2007 N.J. Super. Unpub. LEXIS 1769 (Suer. NJ App. 2007); certification granted in part 195 N.J. 417, 949 A.2d 846, 2008 N.J. LEXIS 427 (2008); affirmed in part and modified in part, 198 N.J. 482, 969 A.2d 1052, 2009 N.J. LEXIS 88 (N.J., Mar. 17, 2009)

At [\*22]: “William Davis, a forensic document examiner employed by the Department of Criminal Justice testified as a handwriting expert. Davis compared the writing on the map to defendant’s handwriting and ‘was unable to make a determination as to authorship’ because of the limited amount of writing on the map and the ‘fact that [the examined map] was a copied document.’ Davis concluded ‘that [defendant] was unable to be identified or eliminated as being the author of [the writing on the map].’”

COMMENTARY: I always wonder about the wisdom of such expert testimony when it can only provide an arguing point for the defense, unless defense counsel called him for that purpose. This also seems to compromise between the impossibility copies cause in Item 643 and the facility enjoyed with copies in Item 644. Now any judge can enjoy any precedent, except unfortunately the happiest of the three, Item 644, is unpublished.

646. *State v Violante*, 2007 N.J. Super. Unpub. LEXIS 2355 (NJ Super. App. 2007)

“As expected, Adasczik testified that the signature on the title was not hers. Defendant did not testify. However, on cross-examination of Adasczik, defense counsel elicited from Adasczik that when Adasczik asked defendant how he transferred the title defendant said, ‘you signed it over,’ to which Adasczik said, ‘no, I didn’t. I would have remembered that,’ to which defendant replied, ‘no, you just forgot.’

“This was the theme of the defense. Indeed, the defense attempted to prove that Adasczik had memory problem, and the defense produced a handwriting expert in an effort to prove that the signature on the title was Adasczik’s.

“In rebuttal, the State produced a handwriting expert who contradicted the defense expert.

“By its verdict, the jury obviously believed that the purported signature of Adasczik on the title was a forgery and that defendant presented the forged document to the Division of Motor Vehicles. These acts constituted forgery and uttering a forged document, and by surreptitiously transferring legal title to the vehicle [\*7] into his name, defendant also committed theft by deception.”

COMMENTARY: A case of routine admissibility.

## 2009

647. *In the Matter of Gonzalez*, No. A-0644-07T2 (NJ Superior Ct. App. Div. 2009)

Document examiner William Davis testified that Gonzalez, a police officer, had probably signed another officer's name to citations. Conviction for submitting a false police report was affirmed.

COMMENTARY: A case of routine admissibility.

648. *State v Caines*, 2009 N.J. Super. Unpub. LEXIS 1781 (Superior Court NJ App. Div. 2009); petition for certification denied, 983 A.2d 201, 200 N.J. 472 (NJ 2009); petition for habeas corpus dismissed, *Caines v Ricci, et al.*, Civil No. 10-3643 (WJM). (US DC D. NY 2012)}

"Referring to the written statement given to police, defendant claimed that his signature on each page was forged. In response the State called Sergeant Daniel Poland, supervisor of the Document Examination Unit of the New Jersey State Police. Qualified as a handwriting expert, Sergeant Poland compared signatures of defendant on several documents with the signatures on defendant's statement and opined they were signed by the same person."

COMMENTARY: A case of routine admissibility.

## 2010

649. *State v Goodman*, 1 A. 3d 767, 415 N.J. Super. 210 (NJ App. Div. 2010)

While in prison waiting trial, defendant sent a letter to another inmate. The letter, that could have been interpreted as soliciting help in intimidating or harming a potential witness, was found after an incident in the jail. William Davis, a forensic document examiner from the New Jersey Division of Criminal Justice, identified defendant as writer of the letter.

COMMENTARY: A case of routine admissibility.

## 2012

650. *Azizi v Phillips*, No. A-2975-05T1. (Superior Ct NY App. Div. 2006.)

Plaintiff claimed Robert J. Phillips had not given document examination services as contracted for and she allegedly paid for. Phillips' appeal from trial court denied for, among other things, failure to pursue discovery before trial and to exercise other rights before trial, and for appearing at trial unprepared.

COMMENTARY: Both parties acted in pro per. The trial transcript reveals that Phillips maintained that plaintiff was the opposing party in one case whom he confused with a client of the same name in an unrelated case. As a result, he appeared in small claims court with the wrong file. Repeated requests for a brief recess to run home for thee correct file were denied.

651. *EMC, LLC, successor in interest to Emigrant Mortgage Company, Inc., v Cooper, et al.*, No. A-0948-10T4. (Superior Court NJ App. Div. 2012)

Two defendants denied their signatures on mortgage documents. Their handwriting expert, J. Wright Leonard, testified to her observations supporting her opinion. Emigrant's expert, William

J. Ries, explained the evidence of falsity as evidence of disguise, stating he had had more than 200 cases where people deliberately disguised their signatures in order to deny them later.

Emigrant prevailed.

COMMENTARY: There is no report that defendants objected to Mr. Ries's psychic ability to determine a writer's past intention to deny a signature several years in the future.

652. *Harrison v Estate of Massaro*, No. A-3497-09T2. (Superior Ct. NJ App. Div. 2012)

"Following Massaro's death, Harrison searched their home for an executed will in her favor. Shortly after Thanksgiving 2007, she claims to have located in a jacket pocket a typed or word processed letter to Servin, purportedly signed by Massaro, in which Massaro modified his will to bequeath small sums to three individuals and a charity and to make Harrison the beneficiary of the remainder of an estate that was disclosed at trial to be worth approximately \$24,000,000 or more. Harrison disclosed the existence of the letter and the circumstances in which it had been found to her sister. Both testified at trial regarding the letter.

"The Estate challenged the authenticity of the letter and, at trial, offered the testimony of an expert in forensic document examination, John Osborn. The expert concluded that the signature on the letter was created by use of Massaro's signature stamp or by a manipulation of a stamped signature. Harrison offered no contrary expert proofs. Servin testified at trial that he did not receive a copy of the disputed letter."

COMMENTARY: Later Osborn's name is misspelled with an "e" at the end. The trial judge also considered stylistic qualities of the letter, concluding it was not authored by a native speaker of English. Harrison was awarded a lump sum palimony about a tenth of what she sought with the letter on the basis that decedent, while declining to marry her, had promised he would take care of her for life if she lived with him.

653. *State v Graham*, No. A-0025-11T1. (Superior Ct. NJ App. Div. 2012)

"Investigation conducted by Motor Vehicle Commission personnel revealed that the title transfer was accomplished through forgeries. A handwriting expert testified accordingly at trial. Indeed, not only did the signatures attributed to Broach and her mother not match their handwriting, but Broach's name was misspelled."

COMMENTARY: A case of routine admissibility.

## DD. NEW MEXICO CASES.

### *1. New Mexico Court of Appeals.*

1997

654. *Martinez, et al., v Martinez, et al.*, 123 N.M. 816, 945 Pac.2d 1034, 1997-NMCA-096 (NM App. 1997)

Plaintiffs called Judith Housley who said the questioned signature was forged and the date altered, and she identified the writer. Three lay witnesses also said the signature was forged. Plaintiffs prevailed.



COMMENTARY: Ms. Housley is a member of NADE. She has informed me that she had been the subject of repeated, vigorous, though unsuccessful, attacks on her qualifications and competence.

## 2000

655. *State v Torres*, 129 N.M. 51, 2000 NMCA 38, 1 P.3d 433, 2000 N.M. App. LEXIS 28, 39 N.M. St. B. Bull. 20

“The State presented evidence that the USPS return receipt had originally been attached to a letter sent to Joseph Vigil by a nursing home where Defendant worked. Mr. Vigil was in Clayton, New Mexico, at the time he allegedly signed the return receipt and was not an employee of INS. The State’s handwriting expert identified some of the handwriting on the return receipt as definitely belonging to Defendant, and some of the handwriting as probably belonging to Defendant. The State’s expert also testified that the cash receipt was written by Defendant and showed evidence of alteration, erasure, and the use of correction tape. The State’s expert did not issue a conclusive opinion about the validity [\*4] of the money receipt.”

COMMENTARY: Torres could not explain how she had the false INS receipt. The case has several document examination tasks that one would wish more information on. Even so, it shows legal reliability and admissibility of the several tasks.

## 2012

656. *State v Garcia*, Docket No. 31,470. (NM Ct. App. 2012)}

Defendant, a male, was convicted of contributing to the delinquency of a minor, a female, who, however, did not become delinquent. The basis of accusation of contribution was a handwritten letter of a sexual fantasy addressed to a female. In a series of inferences based on single facts and a reasonable supposition the Court of Appeal finds that the jury could have reasonably convicted defendant.

COMMENTARY: This kind of logic is dangerous, since the cases in which it seems ideal will persuade us it is always an ideal logic. However, to avoid all reasonable doubt logically, the supposition must be proven valid in all cases of the same kind to which it is applied, and one must not slip into actually inferring the factual conclusion directly and solely from the single fact. This kind of inference is part of what is called indirect evidence. The instructions that I have heard re indirect evidence when on a jury panel seemed to be logically inadequate even if legally correct. This applies to other instructions, for example “proof beyond a reasonable doubt” being defined as “an abiding conviction” without consideration of the cause for the abiding conviction. Valid logic should be a legal requirement in criminal convictions, while some case reports hint that at times such is not a universal requirement.

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## EE. NEW YORK CASES.

### *1. New York trial courts.*

#### 2003

657. *Harris v Harris*, Supreme Ct. of N.Y., County of Queens, Findings of Fact (2003)

At hearing, defendant called handwriting expert Jeffrey Luber. He testified that plaintiff most probably printed and wrote her mother's name on marriage license. Since she failed to prove defendant had married her, summary judgment was granted. The two had cohabited for several years. Court gives this quote: "The mutual agreement necessary to create such a marriage must be conveyed with such a demonstration of intent and with such clarity on the part of the parties that marriage does not creep up on either of them and catch them unawares. One cannot be married unwittingly or accidentally."

COMMENTARY: A case of routine admission, and legal triumph for the confirmed bachelor who wants it both ways.

#### 2005

658. *People v Pierre*, 2005 NY Slip Op 50522U, 7 Misc. 3d 1010A, 801 N.Y.S.2d 240, 2005 N.Y. Misc. LEXIS 703 (Supreme Ct. King's County NY 2005)

[\*4]: "[Defendant alleges that] his trial attorney, John B. Stella, did not effectively cross-examine some witnesses, particularly Matthew Falco, a handwriting expert who identified the defendant's handwriting ('highly probable') on a note found in the getaway car. (*Ground I, pars. 1-4*). This note referred to the money that would be coming out of the Beer Castle. The note, according to Falco, also contained the handwriting (again, 'highly probable') of co-defendant Terry Williford asking when the money would be coming out. In his own testimony claiming duress, the defendant admitted to having written the note in answer to the written inquiry of co-defendant Williford. Therefore, vigorous cross-examination of the handwriting expert by his attorney would not have benefitted the defendant."

[\*5]: "[Defendant alleges that] defense counsel was ineffective for allowing the defendant to testify that his co-defendants coerced the defendant into assisting in the crime (*Ground 1, pars. 7-22*). The decision to testify belonged to the defendant himself, and the defendant, given the circumstances of the case, had to explain in his defense how a note in his own handwriting concerning the money came to be in the getaway car. A duress defense was not so implausible as to amount to ineffective assistance, given all of the surrounding circumstances of the case, and the facts in the defendant's statements to the police (even though those statements were not introduced at trial). Although this defense was not credible, there really was no other defense available. Had the defendant pursued a different defense, the People may very well have decided to ask for a severance and introduce the defendant's statements admitting his participation under duress. Thus, the defendant was effectively 'locked in' to this defense."

The decision concludes: "The defendant testified at trial and had every opportunity to present his version of the facts supporting his defense of duress. His true problem is that almost no

version of the events can establish this defense, because the compelling evidence of his note in the getaway car and his connections to the Beer Castle and Michael Williams are just too much for even an inventive mind to overcome.

“For the foregoing [\*13] reasons, the defendant’s motion is in all respects denied without a hearing.”

COMMENTARY: I give extended quotes on what is a simple issue so that you may enjoy the logic of the appeal, namely, that trial counsel was ineffective for offering the least unlikely defense in an impossible situation.

659. *In the Matter of the Estate of Casimiro Romano*, 2005 NY Slip Op 51011U, 8 Misc. 3d 1010A, 801 N.Y.S.2d 781, 2005 N.Y. Misc. LEXIS 1319 (Surrogate Ct. NY Nassau Co. 2005)

“In support of her claim that the conveyance was a gift, Mrs. Romano offered the testimony of Benedict Lonetto (hereinafter ‘Lonetto’), the decedent’s accountant for over thirty-six years, who purportedly acted as a witness on the deed. Prior to trial, the objectant claimed that the signatures of both the decedent and Lonetto on the deed were forgeries. [\*13] At the commencement of the trial, however, the objectant, based upon a change of opinion of his handwriting expert, conceded that the decedent’s signature was genuine. The objectant maintained that Lonetto’s signature was a forgery and offered at trial the testimony of Jeffrey Lubner, a handwriting expert, in support of his position.”

Then later: “[A] certificate of acknowledgment attached to a deed raises a presumption of due execution which can only be overcome with clear and convincing evidence (*Albany County Savings Bank v McCarty*, 149 N.Y. 71, 80, 43 N.E. 427 [1896]; *Republic Pension Services, Inc. v Cononico*, 278 A.D.2d 470, 718 N.Y.S.2d 76 [2000]). Here, the allegation of forgery is made as to the witness’s signature on the deed which, in this case, was superfluous [\*32] since the deed was acknowledged. In any event, in the case of alleged forgery, ‘[a] high degree of proof is required to set aside a deed on the ground of forgery’ (5 *Warren’s New York Real Property* §§ 50.81 [5th ed. rev.]). Although the handwriting expert testified he is ninety-eight to nine percent certain it is not Lonetto’s signature on the deed, Lonetto vehemently testified that it is his signature. Mrs. Romano’s counsel argues that the expert’s opinion is questionable because he ultimately conceded prior to trial that he was incorrect in his position that the decedent’s signature on the deed was a forgery. Furthermore, most of the exemplars used by the expert were photographic reproductions, not originals. The expert also testified that he did not review some of the exemplars until immediately before he testified. Here, the testimony as to Lonetto’s signature is conflicting and as such is insufficient to overcome the presumption of due execution of the deed raised by the acknowledgment.”

COMMENTARY: The lengthy quotes are offered as a salutary lesson to us all. The expert made several mistakes, one being offering a numerical statement of certitude which the best authorities instruct us not to do. See, for example: Thomas V. McAlexander, Jan Beck and Ronald M. Dick, 36 *Journal of Forensic Science*, “Standardization of handwriting opinion terminology,” 311-9 (March 1991).

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2007

660. *Bryant v Bryant*, 2007 NY Slip Op 52413 (NY Surrogate's Ct. Bronx 2007)

Caroline Kurz, a forensic document examiner since 1985, testified as an expert witness. She opined that although the same person signed all of the exemplars in evidence, a different person signed the New York deed. On cross-examination, the expert agreed that there are numerous variations in the decedent's signature on several of the exemplars in evidence, but she maintained that such variations are usual or common, and do not constitute indicia of a forgery. Her opinion was based on size and proportions of certain letters and "the flow or rhythm of the signature."

"The expert conceded during cross-examination that she could not provide a precise definition for either flow or rhythm and that, in many ways, authenticating a signature is more of an art than a science."

COMMENTARY: "Flow" is one of those basic English words one should be able easily to understand and explain, otherwise one should master the language and the exigencies of testifying as an expert before venturing into court. All we need do is refer to *Merriam-Webster Collegiate Dictionary* for the fundamental meaning of "rhythm" and then apply it to handwriting: Rhythm in handwriting is the degree of regularity in the recurrence of the same or similar features across time and space. Each element of that definition is subject to objective and demonstrable observation.

2009

661. *In the Matter of Petote*, 2009 NY Slip Op 50015 (NY Surrogate's Court, New York, Monroe 2009)

"Petitioner's sole direct evidence of fraud came from James Beikirch, a handwriting expert who served in the Monroe County Sheriff's office for thirty five years. Mr. Beikirch testified that the signature on the document was not authored by the same person who authored known examples of the decedent's signature. Mr. Beikirch has a history of professional expertise in the area of forgery detection and signature analysis. On its face value, his testimony was both professional and credible. However,...."

Then follows a list of faults not of Beikirch's doing. Plaintiff sabotaged his testimony as she did her own attorney's efforts on her behalf. The Court's assessment was:

"Clearly, petitioner's doubts were strongly colored by the parties' contentious relationship, but petitioner had a right to investigate her concerns as a potential administrator, collect evidence, and through her counsel, have her day in court.

"By the date of the hearing, however, once all evidence was collected, petitioner was pursuing this matter not out of a question of justice but out of her emotions regarding the respondent, sanctionable conduct under NYCRR §§130-1.1(c)(2). She acted unprofessionally and without good faith during the hearing. Exemplars were misplaced during the trial, and had been mis-identified prior to Mr. Beikirch's analysis, rendering his conclusions meritless, conclusions upon which petitioner's position critically relied. She interrupted the trial to insert her opinions with regard to how the matter should proceed, stubbornly resisted to concede obvious points, and was determined to litigate the entire question based upon principle alone once it was clear that her

legal position was untenable. Petitioner's attorney performed admirably and professionally, especially given the extremely high burden of proof which he faced, but his representation of petitioner was hampered by petitioner herself, to the point where it affected the judicial process and caused unfair financial repercussions to the respondent."

COMMENTARY: The order in which I retrieved the various cases discussed in this collection cannot be recovered. This case was included in August 2012, by which date my empathy for the experts had grown, except for one or two pointed exceptions, and an astute reader could probably discern the identity of the more exceptional of the exceptions. More and more I am suspecting expert witnesses suffer far more damage from their clients, both litigant and attorney, than these suffer from their experts. This is a case in point, wherein the judge said at first of Beikirch: "On its face value, his testimony was both professional and credible." Then came the difficulties arising on cross-examination, and finally the attributing of the source of these difficulties to plaintiff. Absent the last bit of information, it would have appeared it was a case lost by the expert witness, which would have been a most unjust assessment. How many other expert witnesses have suffered such clients, but the case report gives appearance of the opposite sufferance?

Beikirch and I are members of NADE, so the reader might want to read the case report itself lest I let organizational loyalty influence objective assessment.

662. *Yellow Book of NY, Inc., v Albano, et al.*, 2009 NY Slip Op 32319 ( NY Supreme Court Nassau County 2009)

Dennis Ryan, "an experienced Forensic Document Examiner," testified to the authenticity of defendant's signature on three disputed advertising contracts.

COMMENTARY: A case of routine admissibility.

## 2010

663. *Webb, et al., v Smith, et al.*, 2010 NY Slip Op 51814 (NY Supreme Court New York County 2010)

Among the witnesses who testified were "Dennis Ryan, a forensic document examiner who the parties stipulated was qualified as an expert in the field of handwriting" and "Ruth Brayer, who the parties stipulated was a handwriting expert...." The substance of their testimony is not given.

COMMENTARY: A case of routine admissibility.

## 2012

664. *25 West 86th St. Operating Corp. v Blanchard, et al.*, 2012 NY Slip Op 51798(U) (Supreme Court, Appellate Term, First Department 2012)}

This is the entire text of the report:

"A fair interpretation of the evidence supports the trial court's express finding that tenant had a 'deemed two-year lease renewal' through March 31, 2009 and that the signature on the disputed one-year renewal lease proffered by landlord was not that of tenant (see generally *Thoreson v*

*Penthouse Intl.*, 80 NY2d 490, 495 [1992]). This finding, resting in large measure on the trial court's assessment of the credibility of tenant's forensic handwriting expert and the weight to be accorded to his testimony, is entitled to deference on appeal (see *Levy v Braley*, 176 AD2d 1030, 1033 [1991]). Thus, this 2008 holdover proceeding was properly dismissed, since the notice of nonrenewal was not served during the 'window period' prior to expiration of the two-year renewal lease found by the court to be effective (see *Ansonia Assoc. v Consiglio*, 163 AD2d 98 [1990]). In light of the court's finding that tenant did not execute the one-year renewal lease relied on by landlord, and in the absence of any showing that it was signed by a person who had actual or apparent authority to act on tenant's behalf, landlord's claim that the one-year renewal was ratified by tenant was properly rejected (see *Leasing Serv. Corp. v Vita Italian Rest. Inc.*, 171 AD2d 926 [1991]; 12 *Williston on Contracts* [4th ed] § 35:29). Nor did the court err in denying landlord's mid-trial request for the name of tenant's forensic expert (see CPLR 408; *Collins v Greater New York Sav. Bank*, 194 AD2d 514 [1993]).

"In view of this determination, we need not and do not address landlord's remaining arguments.

"THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT."

COMMENTARY: Some things are made unclear, such as did the handwriting expert testify in person or only by written report not disclosed to the landlord? Or was there another forensic expert involved? Having worked for both landlords and tenants, I can assure the reader that members of both classes of citizens are equally capable of fabricating needed documentation.

665. *Jiles v Archer, et al.*, 2012 NY Slip Op 50260 (NY Supreme Court Queens County 2012)

In a rather long case report, this is all there is on handwriting expertise: "Plaintiff also called 'forensic document examiner' Donald Lehw. He testified that based upon his examination of plaintiff's signature on the 2006 deed and other exemplars prepared by the plaintiff, that the 2006 signature did not match the examples of her known signature."

COMMENTARY: Plaintiff's application was denied and her complaint dismissed. In summary the court said: "Thus, because this court finds that plaintiff had unclean hands in connection with the purchase and sale of this house she is barred from legal and equitable relief [citations omitted]."

666. *Smith v Sullivan*, 2012 NY Slip Op 22368 (NY Supreme Court, Orange County, 2012)

Smith and Sullivan ran for the same office of County Legislator, and a very close race each sought to nullify votes cast for the other, while Smith sought to have some voters for him cast ballots after the close of the election. Smith presented an affidavit and testimony from Robert Baier, handwriting expert, challenging the validity of signatures by voters for Sullivan. The court discounted the testimony for what seem to be speculative and logical reasons.

COMMENTARY: This case is interesting for several reasons which include the judge's decisions on what he was forbidden to do, for recourse the litigants might have, for the strategy of the parties, and why the judge discounted the handwriting testimony by Baier. Each party apparently took actions that were against its own position in court by invalidating some of its own votes. The reasoning by the judge for discounting the expert testimony seems to me based on the fact that the witness was entirely candid about the limitations he labored under and what

require him to alter the assurance of his opinion. To my mind candidness of that kind would lead me to give more credit to someone's testimony. Indeed, the witness showed the same modesty in his limitations under the accepted standards of his discipline as the judge showed under the rules he was obliged to follow. Thus, I tend to think the judge gave reason why his decision should be as questionable as he found the expert's testimony. However, since my view might be incorrect, read the case report for yourself if this issue is of interest to you, but read it also because it is one of those cases that teach us how the judicial mind can operate.

## *2. New York Courts of Appeal.*

### 1994

667. *People v Michallon*, 201 A.D.2 915, 607 NYS2 781, 1994 NY App Div LEXIS 2088 (NY Supreme Ct 1994)

At page 783 the Court of Appeals says that "the court erred in admitting opinion testimony by the People's handwriting expert that spray paint writing on the victims' vehicles corresponded to defendant's handwriting. The People failed to make the threshold showing that comparing handwriting to spray paint writing is scientifically reliable." The error was harmless since it was not shown the jury would have found differently if that testimony had not been given and since notes found on victims' vehicles were identified by the expert as written by defendant.

COMMENTARY: The usual handwriting comparison was admissible and apparently not objected to as unreliable. I do not think that any qualified handwriting examiner would disagree that to perform an unusual comparison, such as with spray-paint graffiti, would require special competence in that endeavor and ability to prove one's competence.

### 2001

668. *People v Fields*, 287 A.D.2d 577; 731 N.Y.S.2d 492; 2001 N.Y. App. Div. LEXIS 9597 (Supr. Ct. NY, App. Div., 2 Dept. 2001)

"The defendant also contends that the court erred in admitting letters allegedly written by him and addressed to Marshall at the Orange County Jail as evidence of his guilt. *CPLR 4536* authorizes the 'comparison of a disputed writing with any writing proved to the satisfaction of the court to be the handwriting of the person claimed to have made the disputed writing. [\*4]' Once a court determines the genuineness of a handwriting specimen, an expert or a jury may compare a disputed writing to the known specimen, even in the absence of an expert opinion (see, *People v Molineux*, 168 NY 264, 330; *People v Hunter*, 34 NY2d 432, 435-436). The prosecution's handwriting expert testified on direct examination that the defendant probably wrote the letters, since the letters exhibited similar characteristics which evidenced a probable common authorship based upon his comparison with handwriting samples submitted by the defendant."

COMMENTARY: The case report does not indicate what kind of letters were involved.

669. *People v Pena*, 279 A.D.2d 300; 718 N.Y.S.2d 838; 2001 N.Y. App. Div. LEXIS 85 (NY Supreme Ct App 1 Div, 2001)

“The verdict was based on legally sufficient evidence. There is no basis upon which to disturb the jury’s evaluation of the handwriting expert’s testimony. Defendant’s intent to deprive the complainants of their money and her wrongful taking thereof could be reasonably inferred from the evidence.”

COMMENTARY: A case of routine admissibility.

## 2004

670. *People v Kairis*, 4 A.D.3d 806, 771 N.Y.S.2d 774, 2004 N.Y. App. Div. LEXIS 1472 (Supr. Ct. NY, App. Division, Fourth Department 2004); appeal denied, 2 N.Y.3d 763, 811 N.E.2d 43, 2004 N.Y. LEXIS 1454, 778 N.Y.S.2d 781 (N.Y., Apr. 23, 2004)

At [\*2]: “Nor did defendant preserve for our review his additional contentions regarding the alleged failure of the People to preserve evidence of motive and the admissibility of the testimony of the People’s handwriting expert.”

COMMENTARY: A case of routine admissibility.

## 2006

671. *In the Matter of Fauci and Fauci*, 2006 NY Slip Op 1748, 28 A.D.3d 192, 811 N.Y.S.2d 38, 2006 N.Y. App. Div. LEXIS 2743 (Supr. Ct. NY App. 1 Dept. 2006); related proceeding, 189 NJ 201, 914 A2d 834, 2007 N.J. LEXIS 28 (2007); motion granted, 41 A.D.3d 1, 834 NYS2d 523, 2007 N.Y. App. Div. LEXIS 4638, 2007 NY Slip Op 3210 (N.Y. App. Div. 1st Dep’t, Apr. 17, 2007)

At [\*6]: “With respect to Anthony’s application for admission to the bar, the Committee retained a handwriting expert who testified that after examining 12 known signatures of Christopher, and comparing them to the signature on the notarial jurat on Anthony’s bar application, and after examining the known signature of Anthony, it was Anthony who had affixed Christopher’s signature to his affidavit for admission to the bar.” This fact supported several findings of violations.

“[\*8] However, the Committee’s handwriting expert testified that it was indeed Anthony’s signature on the stipulation. The Committee also presented two witnesses who testified that Anthony had attended that conference. Thus, the record fully supports the finding that Anthony held himself out as an attorney.”

COMMENTARY: Two brothers were found guilty of professional misconduct and suspended from the practice of law, one for three years and the other for 18 months. The false testimony given by the brothers in denying the forgeries was alone sufficient to justify the suspensions.

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2012

672. *Bank of New York v Spadafora, et al.*, 92 A.D.3d 629, 938 N.Y.S.2d 200, 2012 NY Slip Op 922 (NY Supreme Ct. App Div. 2012)

Plaintiff's handwriting expert was properly limited in rebuttal testimony. However, plaintiff prevailed, the signature on the deed in question being found to be a forgery.

COMMENTARY: It is not noted what the testimony was that was not permitted or why.

673. *Felder v Storobin*, Slip Op 06142 (App. Div. Supreme Ct. NY 2 Dpt. 2012)

Felder unsuccessfully attempted to invalidate Storobin's petition to run as a Republican for the state senate. Among other contentions Felder challenged the authenticity of five signatures on the petition.

"Jeffrey Luber, a handwriting expert called as a witness by Felder, testified that each of these five signatures was forged, based upon his comparison of the designating petition with the voter registration records maintained by the Board of Elections. He described the differences in signatures as great and glaring. With respect to four of the signatories, the exemplar signatures from the Board of Elections were 28 years old, 20 years old, 19 years old, and 12 years old, respectively.

"Luber conceded in his testimony that a person's signature may change with time and age. Felder did not call as witnesses any of the voters in question, and did not produce comparative signature evidence more recent than that set forth in the records obtained from the Board of Elections.... [T]he Supreme Court found Luber's testimony insufficient to meet the burden of proof for fraud, particularly in light of, inter alia, the significant gaps in time between the dates of the voters' exemplar signatures from the Board of Elections and the signatures on the designating petition"

COMMENTARY: One wonders whether Luber requested better and more exemplars but did the honest best he could with what he had.

674. *Lumpkin v Fischer*, 93 A.D.3d 1011, 940 N.Y.S.2d 344, 2012 NY Slip Op 1852 (App. Div. Supreme Ct. NY 3rd Div. 2012.)

At page 1012: "While petitioner disputes the credentials of the correction officer who performed the handwriting comparison, it was sufficient that the Hearing Officer, as trier of fact, made an independent assessment of the handwriting samples and noted the similarity on the record (see *Matter of Collins v Fischer*, 89 AD3d 1355, 1356 [2011]; *Matter of Mills v Fischer*, 65 AD3d 1427, 1427 [2009])."

COMMENTARY: The court of appeal sidesteps the challenge to qualifications as a handwriting expert by citing the legal rule that the trier of fact is the ultimate expert in handwriting and does not need assistance. This expert opinion of the trier of fact does not admit of a contrary expert witness nor cross-examination. It seems to me to be a situation where defendant by law may not confront his accuser nor defend himself against new evidence that need not be given in open court since the rule applies to both bench trials and jury trials.

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## FF. NORTH CAROLINA CASES.

### *1. North Carolina Courts of Appeal.*

#### 2000

675. *North Carolina State Bar v Harris*, N.C. Court of Appeals, No. COA 99-580, 4 April 2000

A member of a hearing committee did not act as a handwriting expert in bringing similarities to the attention of the handwriting expert. The expert said that there “was no possible way” Capps, the client whose settlement check defendant was accused of appropriating to his own benefit, could have signed the release. But the expert could not say who wrote Capps’ signature.

COMMENTARY: A case of routine admissibility.

#### 2002

676. *In the Matter of the Will Of: Cornelius Winston Allen*, 148 N.C. App. 526; 559 S.E.2d 556; 2002 N.C. App. LEXIS 33 (2002 N.C. App.)

“Caveators contend that ‘uncontradicted expert testimony established that Mr. Allen did not write the entire will,’ entitling them to directed verdict on this issue. At trial, a handwriting expert testified that the disputed phrases did not appear to be in Mr. Allen’s handwriting. However, we are not persuaded by caveators’ [\*7] contention that the authorship of the phrases was conclusively shown by caveators’ expert testimony. Several other witnesses testified to their understanding that Mr. Allen added the phrase about ‘wife Valerie’ after the will was initially executed. Moreover, it was not disputed that Mr. Allen died some eight years after writing the main body of the will, and had suffered a stroke before his death. Under these circumstances, Mr. Allen’s handwriting may have changed between the original execution of the will and any later additions. We note that the handwriting expert had not examined any other exemplars of Mr. Allen’s handwriting.”

COMMENTARY: The last sentence suggests only the unquestioned parts of the will were compared to the questioned parts. If so, the expert was ill advised or, a common occurrence, the client failed to satisfy a request for more writings.

#### 2003

677. *Freeman v Freeman*, 155 N.C. App. 603, 573 S.E.2d 708, 2002 N.C. App. LEXIS 1575 (NC App. 2002); review denied, 2003 N.C. LEXIS 696 (NC 2003)

“In the instant case, defendant produced not only her own testimony, but also evidence of several circumstances inconsistent with her having signed the return of service. Defendant testified that she had never been to the Alamance County courthouse, where the return of service must have been signed within the two-minute window between the filing of the complaint and the filing of the return of service. Although plaintiff presented a handwriting analysis expert who stated his opinion ‘based on a reasonable degree of scientific certainty,’ that the signature on the acceptance of service was defendant’s, defendant also presented testimony by another

handwriting expert, [\*9] who stated that he could not with any degree of scientific certainty say that the questioned signature was defendant's. In fact, defendant's expert also testified that the contested signature had some characteristics in common with Bernice Freeman's signature on the verification accompanying the divorce complaint. Defendant testified that Bernice Freeman had signed her name to documents on other occasions."

COMMENTARY: Defendant expert appears to have done a more thorough job and expressed the opinion more conservatively. The imprudence of permitting another to sign one's name is illustrated. The plaintiff's expert may well have had a pool of exemplars with a number of defendant's signatures that had been written by decedent.

## 2005

678. *State v Wilson*, 2005 N.C. App. LEXIS 2273 (NC App. 2005)

At [\*16]: "Before the expert testified, the State and defendant entered into a stipulation in which they agreed that if the State's expert witness, Jeffrey S. Taylor, [\*16] were called to testify, he would testify that he compared the signatures on (1) a Roadway Express visitor log and delivery receipts dated 10 July 2003 and 31 July 2003 with (2) signatures known to have been made by defendant. The stipulation then stated 'that Mr. Taylor's opinion is that the defendant probably signed his name where it appears on the Visitor's Log and the two Delivery Receipts.' The State offered the stipulation as part of its case; Taylor did not testify."

At [\*17]: "Defendant argues on appeal, however, that he particularly needed an expert witness because the report 'disclosed for the first time that the expert had compared Defendant's signature with a photocopy of Defendant's driver's license, and had concluded that the signature on the license was of questionable origin.' He asserts that he 'was entitled to sufficient opportunity to refute this potentially damaging testimony.' Since this opinion of the expert was never admitted into evidence, defendant has failed to demonstrate any prejudice."

The stipulation was received in evidence, but defendant may not assign error to acceptance of his own stipulation.

COMMENTARY: When the handwriting expert's opinion is stipulated to, it is as much of the evidence in the record as if he had testified in person.

679. *Taylor v Abernethy, et al.*, 149 N.C. App. 263, 560 S.E.2d 233, 2002 N.C. App. LEXIS 182 ; review denied, 356 N.C. 695, 579 S.E.2d 102, 2003 N.C. LEXIS 156 (2003); appeal after remand, 2005 N.C. App. LEXIS 2281 (N.C. Ct. App., Oct. 18, 2005); appeal dismissed, 360 N.C. 367, 630 S.E.2d 454, 2006 N.C. LEXIS 120 (N.C., Mar. 2, 2006); certiorari denied, 360 N.C. 367, 630 S.E.2d 454, 2006 N.C. LEXIS 233 (N.C., Mar. 2, 2006)  
2002 N.C. App. LEXIS 182:

This concerned an alleged contract to make a will in favor of a creditor. Court summary reads in part: "(3) opinion testimony of handwriting analyst was admissible to prove authenticity of signature...."

Defendant claimed signature in question was forged. At page 235: "On rebuttal, plaintiff called handwriting expert Charles Perrotta to testify to the validity of Romer's signature on the 10 July 1978 contract. The trial court...would not allow him to render an opinion on the

authenticity of the signature....”

At page 238 is reported the defense argument that, while holding handwriting analysis in general as being not scientific, the Trial Court considered Perrotta as a qualified expert but did not consider his methodology, which was testified to in detail. There was no showing “that there has been any kind of scientific examination of the ability of people using this methodology to arrive at the correct result.” It had been used for years, but there was no scientific basis for it beyond that use.

At page 239 the Court of Appeals replies. On the contrary, case law only requires the expert be “better qualified than the jury.... There is simply no requirement that a party offering the testimony must produce evidence that the testimony is based in science or has been proven through scientific study.” Rules allow expert testimony based on “technical or other specialized knowledge,” not merely scientific knowledge. The gatekeeper role merely requires asking whether the testimony is “sufficiently reliable,” not whether it is scientifically reliable.

North Carolina adopted *Daubert* in *State v Goode*, 341 N.Car. 512, 461 S.E.2d 631 (1996). “In making this determination of reliability, our Supreme Court noted that our courts have focused on the following indicia of reliability: ‘...the expert’s use of established techniques, the expert’s professional background in the field, the use of visual aids before the jury so that the jury is not asked to sacrifice its independence by accepting [the] scientific hypotheses on faith, and independent research conducted by the expert.’” Then at page 240: “The record sufficiently establishes that Perrotta’s testimony meets the four indicia of reliability set forth in *Goode*.” It was error in law for the Trial Court to exclude Perrotta’s testimony, and so the matter was remanded for a new trial.

2005 N.C. App. LEXIS 2281:

The rulings regarding expert handwriting testimony are affirmed. However, since the trial court refused to submit certain questions to the jury as defendant requested, the case was remanded for a new trial.

COMMENTARY: The indicia of reliability given in this case seem far more practical and reasonable, with more universal application, than the *Daubert/Kumho* criteria. Certainly, one might argue in a Federal court they would be the most reasonable criteria for most expert evidence which deals with an everyday reality and addresses practical matters that most people have some experience with. Most important, the eminently sensible view that technical and practical expertise needs only a technical and practical basis for reliability, not a theoretical, scientific basis, should appeal to most fair minded judges.

The idea, that a historical fact of court acceptance for a standard forensic expertise should be discarded in favor of a very recent theoretical fabrication of what makes science to be science, requires two most unreasonable conclusions. First, all the great scientists of history were not scientists at all, and there were no scientists until Popper and his followers put their blind faith into his most unempirical theories of what constitutes empirical science. Second, courts for hundreds of years have been utter fools in the vast majority, if not all, of their rulings on expert evidence. Both these inescapable, logical conclusions of the position of the anti-expert experts show how terribly impertinent and pretentious they truly are. They are as the gad flies of ancient Athens, biting the rumps of mighty steeds, and they will sooner or later be generally recognized as such. I refrain from using the term the philosophers of Athens applied to St. Paul and which is

translated as “babbler,” although the critics’ writings, so repetitious of themselves and each other by prolifically picking up and dropping similar ideas and similar expressions, fit the Athenian bird analogy quite well.

## 2007

680. *State v Burke*, 185 N.C. App. 115, 648 S.E.2d 256, 2007 N.C. App. LEXIS 1738 (NC App. 2007)

“On 3 March 2005, Ms. Capps was summoned to the clerk’s office, where she learned that the order in the file had been changed to match the one sent to her by Southport Concrete. Defendant was asked to provide handwriting samples, which Captain John P. Roggina of the New Hanover County Sheriff’s [\*3] Department analyzed. Upon Captain Roggina’s written opinion that the handwriting of the altered portion of the court order was consistent with defendant’s handwriting samples, defendant was arrested and charged with the felony of intentionally and materially altering an official case record.

“Based on the undisputed facts, a jury could rationally have concluded that defendant was the individual who swapped the pages in the court order. First, the handwriting expert’s opinion was that defendant wrote the handwritten parts of the altered page. Second, defendant was the only one who had a motive to swap the documents; the swap gave him a benefit that he sought before the swap occurred. Finally, defendant’s communication with an employee at Southport Concrete revealed that he was aware of the language that was added to the altered [\*7] order and the benefit it accorded him. On these facts, we hold that there was sufficient evidence to take the case to a jury. Accordingly, the trial court properly denied defendant’s motion to dismiss.”

COMMENTARY: This is a good example how expert evidence mostly works, as a piece in the larger evidential puzzle. “Consistent with” can be a dangerous phrase since in itself it neither identifies nor eliminates a suspect. The expert might demonstrate many significant differences in a questioned signature definitely eliminating the purported writer. The cross-examiner then asks is the i-dot “consistent with” the purported writer’s i-dots. Well, yes. Then jury argument is that the expert proved the purported writer is the real writer, because when pressured he agreed the signatures were “identical.”

## 2009

681. *Henson v Green Tree Servicing LLC*, 676 S.E.2d 615, 2009 N.C. App. LEXIS 814 (NC App. 2009)

“At trial, Mrs. Henson claimed that she did not sign the Agreement and that her signature was forged by an unknown person on behalf of defendant. She further claimed that no [\*5] one advised her of any type of storage lien on the mobile home. Plaintiffs’ handwriting expert testified that ‘Nancy Henson probably did not sign . . . [the Agreement].’ Plaintiffs’ expert did not say who signed the Agreement.”

COMMENTARY: A case of routine admissibility. Unfortunately it did nothing to avoid the ruling: “Taken in the light most favorable to plaintiffs, there was not more than a scintilla of evidence that plaintiffs’ claims could be asserted against defendant.... Accordingly, the trial court

did not err in granting defendant's motion for directed verdict." The handwriting expert was Teresa Dean of NADE. Since courts cited herein equated "probably" with "preponderance of the evidence" or "more likely than not," one is hard put to understand how a jury believing the expert would not rule for plaintiffs, and thus there to be a triable issue.

## *2. North Carolina Supreme Court.*

### 1994

682. *State v Moore*, 440 SE 2d 797, 335 N.C. 567 (NC 1994)

Blanche Kiser Taylor Moore was convicted of murdering a boyfriend by arsenic poisoning and sentenced to death, conviction and sentence both being upheld on appeal. However, that understates the scope of her full accomplishments. Her husband took ill and was found to suffer from arsenic poisoning. The ensuing investigation resulted in the exhumation of the bodies of her father, first husband, and former boyfriend, all testing positive for arsenic. At trial Moore offered the alleged death bed confession of one Garvin Thomas. Unfortunately, a document examiner was involved.

At page 805: "Special Agent Thomas J. Currin of the North Carolina State Bureau of Investigation testified concerning the investigation into a letter received by defendant in the Alamance County jail purportedly written by a man named Garvin Thomas. In the letter, Thomas allegedly confessed to the murder of Reid and the attempted murder of Moore. Based on his examinations and comparisons of defendant's handwriting samples and those of Garvin Thomas, Agent Currin, a questioned document examiner, concluded that, in his opinion, defendant was the person who wrote the confession letter attributed to Garvin Thomas."

Another questioned document examiner almost helped the lady out also at page 805:

"Once the State rested, W. A. Shulenberger, testifying as an expert witness for the defendant, opined that defendant could not have written the confession letter. Shulenberger's examination revealed no evidence of an attempt to disguise or alter the handwriting. He stopped short, however, of stating that Garvin Thomas actually wrote the confession letter."

COMMENTARY: Handwriting experts know that, given the circumstances of the case, the confession letter would have been an imitation not a disguise. If Moore and Thomas had similar styles of writing and Moore had an above average skill at imitating, there could well be minimal indicia of falsity. The case report suggests that Shulenberger went as far as he could within the proper bounds of technical and ethical practice.

### 1998

683. *State v Call*, 349 NC 382, 508 SE2 496, 1998 NC LEXIS 848 (NC Supreme Ct 1998)

In reviewing a murder conviction, the Supreme Court of North Carolina states at page 510: "Defendant also claims that the warrant for handwriting exemplars was improperly issued because the application for it relied on privileged communications and because the magistrate applied the wrong standard for determining probable cause. These contentions are without merit." The communication was a note to his wife that had been left at the house of a third party,

belying an intention of confidentiality.

COMMENTARY: There is no indication that the examination itself to be made of the handwriting exemplars was challenged. It is another case to cite as showing routine acceptance of forensic handwriting analysis.

## GG. NORTH DAKOTA CASES.

### *1. North Dakota Supreme Court.*

#### 2005

684. *State v Hernandez*, 2005 ND 214, 707 N.W.2d 449, 2005 N.D. LEXIS 256 (ND 2005); post-conviction relief denied, *Hernandez v State*, 2007 ND 92, 2007 N.D. LEXIS 104

“Hernandez argues the trial court erred in permitting a licensed private investigator to testify as a handwriting expert without properly exercising the gatekeeping functions required by *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), and *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 119 S. Ct. 1167, 143 L. Ed. 2d 238 (1999). Hernandez claims this Court must follow [\*5] the *Daubert* and *Kumho Tire* decisions. Hernandez also argues the private investigator lacked the qualifications, proficiency, and scientific methodology to analyze the writing in the Spanish letter, and the court erred in allowing him to testify that Hernandez wrote the letter.

“This Court has never explicitly adopted *Daubert* and *Kumho Tire*. See *Howe v. Microsoft Corp.*, 2003 ND 12, P27 n.1, 656 N.W.2d 285. Contrary to Hernandez’s assertion, this Court is not required to follow *Daubert* and *Kumho Tire*, which involved admissibility of expert testimony in federal courts under the federal rules of evidence. This Court has a formal process for adopting procedural rules after appropriate study and recommendation by the Joint Procedure Committee, and we decline Hernandez’s invitation to adopt *Daubert* by judicial decision. See *State v. Osier*, 1997 ND 170, P5 n.1, 569 N.W.2d 441 (refusing to adopt procedural rule by opinion in litigated appeal).

“Under North Dakota law, the admission of expert testimony is governed by *N.D.R.Ev.* 702, which provides:

“If scientific, technical, or other specialized [\*6] knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. Rule 702, *N.D.R.Ev.*, envisions generous allowance of the use of expert testimony if the witness is shown to have some degree of expertise in the field in which the witness is to testify. *Gonzalez v. Tounjian*, 2003 ND 121, P24, 665 N.W.2d 705. An expert need not be a specialist in a highly particularized field if the expert’s knowledge, training, education, and experience will assist the trier of fact. *Myer v. Rygg*, 2001 ND 123, P14, 630 N.W.2d 62. A trial court has broad discretion to determine whether a witness is qualified as an expert and whether the witness’s testimony will assist the trier of fact. *Harfield v. Tate*, 2004 ND 45, P21, 675 N.W.2d 155. A trial court abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, its decision is not the product of a rational mental process leading to a

reasoned decision, or it misinterprets [\*7] or misapplies the law. *Rygg*, at P8. We have said we are reluctant to interfere with the broad discretion given to a trial court to decide the qualifications and usefulness of expert witnesses. *Id.* A trial court does not abuse its discretion in admitting expert testimony whenever the expert's specialized knowledge will assist the trier of fact, even if the expert does not possess a particular expertise or special certification. *Id.* at P15.

"This Court has implicitly recognized the admissibility of expert opinions about handwriting. See *State v Noorlun*, 2005 ND 189, PP15-19, 705 N.W.2d 819; *Timmerman Leasing, Inc. v. Christianson*, 525 N.W.2d 659, 663 (N.D. 1994); *In re Peterson*, 178 N.W.2d 738, 740-41 (N.D. 1970); *Klundt v. Pfeifle*, 77 N.D. 132, 139-41, 41 N.W.2d 416, 420-21 (1950). Here, the private investigator testified he had worked as an agent for the North Dakota Bureau of Criminal Investigation for almost 30 years, and in 1981 he received training for comparing questioned writing with known writing. He testified he had assisted in analyzing handwriting in 100 to 200 cases. Under our standard for the [\*8] allowance of expert testimony, we conclude the trial court did not act arbitrarily, unreasonably, or unconscionably, or misinterpret or misapply the law in determining the private investigator was qualified as an expert in handwriting analysis and deciding his testimony would assist the jury. We therefore hold the court did not abuse its discretion in determining the private investigator was qualified to testify as an expert and his testimony would assist the jury."

COMMENTARY: I have cited extensively from this case in order to illustrate the kind of treatment of a disputed point one may find in the case law. This also pointedly demonstrates how far off base the critics of handwriting expertise are, both as to law and as to historical fact. A forensic expert should have familiarity with and own copies of one's own state's case law and statutes that relate to expert witnesses in general and one's own specialty in particular. This case gives guidance on both topics for handwriting experts in North Dakota. Even better than owning copies, see if the statutes and court decisions of your state are freely accessible on the Internet, as those of California are.

685. *State v Noorlun*, 2005 ND 189, 705 N.W.2d 819 (ND 2005); affirmed, *Noorlun v State*, 2007 ND 118; 736 N.W.2d 477; 2007 N.D. LEXIS 118 (ND 2007)

For the State, Joseph Mongelluzzo testified that Noorlun had signed letters that were in question. Noorlun claimed ineffective assistance of counsel because his attorney did not call a handwriting expert to dispute Mongelluzzo's opinion. However, in denying this claim, the Court pointed out that conviction of the crime charged did not require Noorlun's signature on the principal document.

COMMENTARY: A case of routine admissibility.

## 2009

686. *State v Sorenson*; *State v Nichols*, 2009 ND 147, 770 N.W.2d 701, 2009 N.D. LEXIS 150 (ND 2009)

At [\*29]: "Evidence disclosed Sorenson aided Nichols with the diagram of the Willeys' house. Nichols did not know where the Willeys lived before the murders. There was testimony Sorenson admitted that news reports that she had a diagram of the Willeys' house were true. A



handwriting expert testified it was highly likely the writing on the diagram was Sorenson's handwriting and was not Nichols' handwriting."

COMMENTARY: A case of routine admissibility.

## HH. OHIO CASES.

### 1. *Ohio trial courts.*

#### 2004

687. *Lalumiere v Bureau of Workers' Compensation*, 2004 Ohio 5916, 2004 Ohio Misc. LEXIS 615 (Court of Claims of Ohio 2004)

At [\*3]: "The court finds that the signatures that appear on the BWC forms are those of plaintiff. Forensic specialist David Hall testified as defendant's handwriting expert. Mr. Hall performed an analysis of plaintiff's handwriting and compared a handwriting sample prepared by plaintiff with the signatures on the BWC forms. Mr. Hall concluded that at least one of the signatures on plaintiff's BWC application forms was hers. (Defendant's Exhibit C.)

"Plaintiff is listed as a 'sole proprietor' on both application forms that plaintiff filed with BWC, making her relationship with Potters Wheel as one of an independent contractor....

"Taking into account Mr. Hall's testimony that at least one of the signatures on the forms belonged to plaintiff, the court finds plaintiff's testimony to be less than credible."

COMMENTARY: A case of routine admissibility.

### 2. *Ohio Courts of Appeal.*

#### 1993

688. *Giurbino v Giurbino, et al.*, 89 Ohio App. 3d 646 (OH Ct. App. 1993)

Vickie Willard, document examiner, testified that two withdrawal slips in question were not written or signed by decedent, Connie Giurbino. However, it was irrelevant: "Mrs. Giurbino retained control and ownership over these funds after the 'forgery.' Thus, the alleged 'forgery' is of no consequence."

COMMENTARY: A case of routine admissibility with a caution to attorneys and litigants: be clear on the issues one is litigating. Ms. Willard is, I believe, a member of AFDE.

#### 1996

689. *State v Wilson*, 1113 OH Ap3 737, 682 NE2 5 (Ct Ap 9 Dist OH 1996)

Defendant appealed multiple convictions, among which were nine counts of forgery. Document examiner identified Wilson and codefendant as having written portions of certain checks that victim denied having written and said were stolen. Also, defendant was identified as the one person who had made handwriting on a "Tyrone Stevens" drivers license and on back of one check. No challenge to reliability of the document examiner is reported.

## 1998

690. *State v Keith*, 1998 Oh. App. LEXIS 4990 (OH Ct App. 1998)

The ins and outs of the use of handwriting expert Phillip Bouffard are a bit complicated, but they make the report well worth the reading. In summary, Bouffard testified that two signatures on two letters available only in photocopy were so identical that one, if not both, had to be a forgery. That Bouffard withdrew one statement in his report went to the weight not admissibility of his opinion, since it did not affect his conclusion. Besides, defendant, an attorney, later admitted the letters were false. In Ohio, "Handwriting analysis is a proper subject of expert testimony. See *State v. Loza* (199 OH St. 3d 61, 76-77, 641 N.E.2d 1082)."

COMMENTARY: It seems that the expertise itself is reliable in Ohio, while presumably that would not mean an individual expert or a particular opinion could not be challenged. This is the same Keith as in 2000 Ohio App. LEXIS 3757, but a different prosecution. See Item 695.

## 1999

691. *State v Smark*, 1999 Ohio App LEXIS 2989 (OH Ct Ap 1999)

Defendant appealed Trial Court's ruling that her handwriting expert, Vickie Willard, could not testify before the jury that defendant did not sign the false signature to a prescription form. Since the charge was knowing possession and uttering of a false prescription, not the forging of it, Willard's testimony would confuse the jury as to what was charged and thus the dangers outweighed the probative value. Willard gave her testimony in the absence of the jury which was that the maker of the false signature could not be identified. There was no error in not permitting her testimony to go to the jury.

COMMENTARY: The case does not constitute a challenge to the reliability of expert handwriting evidence, which in Ohio is admissible. Rather, there had to be sufficient relevancy, ability to assist the jury in deciding a fact in issue, and probative value must not be "substantially outweighed by danger of unfair prejudice, of confusion of the issues, or of misleading the jury."

## 2000

692. *City of Toledo v Emery*, 2000 Ohio App. LEXIS 2880 (OH 6 App. Dist. 2000)

"In his third assignment of error, appellant asserts that the trial court erred in admitting the 'go to the zoo' document that Debra Bennett found in her newspaper. Appellant argues Bennett was incompetent to identify the handwriting in the zoo document as his. Appellant points to the testimony of his handwriting 'expert' that a layperson could not conclusively identify a handwriting sample. According to appellant, without expert testimony there was no foundation laid to introduce the document.

"The 'zoo' letter was admissible if for no other reason than it constituted [\*11] evidence of a pattern of conduct which is an element of the offense. As to Debra Bennett's testimony that she recognized the writing on the note as appellant's, this goes to weight, not admissibility. Also admitted were unrefuted samples of appellant's writing by which the jury could compare documents and reach its own conclusion. We cannot say that the court's decision to admit the

‘zoo’ note or Debra Bennett’s testimony about it constituted an abuse of discretion. Accordingly, appellant’s third assignment of error is not well-taken.”

COMMENTARY: That the expert merited quote marks suggests judicial scepticism on qualifications. There has been research on the ability of lay-persons to identify handwriting, even their own. However, I know of only three such published studies dated 1937-1943, except for recent studies comparing lay persons to experts which were designed to test the experts not the lay persons. These latter tests were inspired by the facetious premise that expertise can only be established by comparing experts to non-experts. The individuals first demanding such testing postured themselves as experts on whether others are expert, as well as making other claims of expertise, while the testers claimed to be experts at testing in accord with advanced statistical and scientific methods. None of these two kinds of experts ever tested themselves against non-experts, and so by their own premise they were not experts at criticizing or testing the expertise of others.

693. *State v Jessee*, 2000 Ohio App. LEXIS 4420 (OH App. 10 Dist. 2000)

“After appellant was arrested, a police detective interviewed her. The detective testified that appellant admitted she ‘stole’ the check from out of her boyfriend’s van. (Tr. 135.) The check belonged to his mother, Cynthia Yoho. Appellant [\*2] took the check to the library, typed in her name as the payee, and then took the check to the Family Market and endorsed it. During the trial, a police handwriting expert testified that, in his opinion, appellant signed her name and social security number as the endorser of the check but he was unable to determine if she had signed the check as the maker. The scribbled signature line appears to read Cynthia Yoho.”

COMMENTARY: A case of routine admissibility.

694. *State v Jones*, 2000 Ohio App. LEXIS 2495 (OH App. 10 Dist. 2000)

An expert on gangs testified regarding defendant’s gang name, and gang hierarchy, graffiti and writings. A handwriting expert identified defendant’s handwriting on documents recovered by police.

“The state also presented evidence that its handwriting expert, Detective Bennett, testified to matters beyond the knowledge and experience of laypersons. Detective Bennett explained that, based upon his twenty-seven years of experience and training, he possesses the ability to identify handwriting characteristics that serve as indicators of the authorship of [\*18] a writing. Detective Bennett testified that his opinion was based on reliable, specialized information. Specifically, he based his opinion upon his analysis of handwriting characteristics such as the estimated speed of the writing, the size relationship among letters, the writer’s slant, and the letter formation. Thus, Detective Bennett was qualified to give expert testimony, and any attempt by Jones’ trial counsel to object to his testimony would have been futile.”

COMMENTARY: It seems that the more guilty a defendant is, the more the complaint that defense counsel did not do the futile thing. Or maybe that is how appeal attorneys have found they earn more and avoid complaints from their charges. Another maybe: If the payments from tax resources to attorneys and experts were reduced when their efforts were proven unfounded in either fact or law by a preponderance of the evidence, there might be less pre-trial wrangling, shorter trials, and reduced strain on tax revenues.

695. *State v Keith*, 1997 Ohio App. LEXIS 914 (OH App. 8 Dist. 1997); affirmed, 2000 Ohio App. LEXIS 3757 (OH App. 8 Dist. 2000); dismissed, discretionary appeal not allowed, 90 Ohio St. 3d 1489, 739 N.E.2d 815, 2000 Ohio LEXIS 3149 (OH 2000); discretionary appeal not allowed, 91 Ohio St. 3d 1418, 741 N.E.2d 144, 2001 Ohio LEXIS 173 (OH 2001)  
2000 Ohio App. LEXIS 3757:

“Dr. Phillip Bouffard, a renowned handwriting expert, testified that the signatures on the back of the insurance checks belonged to Keith. The expert also opined that the Will in question had been typed [\*3] on Keith’s typewriter and that Joe Deszo’s signature on the document was a forgery. Further, one of Keith’s girlfriends testified that within days of Joe Deszo’s death, Keith was talking about ‘making it big’ and disclosed his plan to back-date a fake Will.”

COMMENTARY: Keith had, from his vantage point, the dubious pleasure of hearing Bouffard testify previously. See Item 690 above. I suspect that by this time Keith would have chosen an alternative term to “renowned” to describe Bouffard, who showed a versatility of talents.

696. *State v Rumer*, 2002 Ohio 1331; 2000 Ohio App. LEXIS 6354 (OH App. 12 Dist. 2000)

“Appellant also alleges that the verdict is against the manifest weight of the evidence. Appellant contends that the testimony of the state’s handwriting expert, who [\*2] stated that based on a handwriting analysis, appellant was ‘probably’ the person who forged the checks, is legally insufficient to support her conviction. The assignment of error is overruled on the basis of *State v. Thompkins* (1997), 78 Ohio St. 3d 380, 678 N.E.2d 541 and *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus. It is the province of the trier of fact to determine the weight to be given to the evidence and testimony. *Id.*”

COMMENTARY: Whenever other courts considered the standard term “probably” and its force in terms of levels of proof at court, they have considered it to equate to “preponderance of the evidence” or “more likely than not.” In this case the jury apparently was permitted to consider it equal to “beyond reasonable doubt.” On the other hand, courts have stated that in criminal cases single pieces of evidence need not be beyond a reasonable doubt to support conviction, only the entirety of the cumulative evidence.

697. *State v Santurri*, 2000 Ohio App. LEXIS 2513 (Oh. Ap 2000)

Assignment of error that counsel did not challenge state’s handwriting expert and did not call one was overruled. One was consulted by defense and not called, but appellant did not state what the expert would have testified to. State’s expert gave an inconclusive opinion and was neutralized by cross-examination. So there was no deficiency of representation.

COMMENTARY: This is one of those cases where one wonders why the bother of having the state’s handwriting expert come in.

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698. *Economy Linen & Towel Service, Inc., v McIntosh*, 2001 OH App LEXIS 4145 (Oh. App 2001)

Defendant appealed jury verdict on contract. He contended at trial that handwritten "36" for duration of contract in months had been altered from the "0" he had agreed to. Harold F. Rodin testified as plaintiff's expert document examiner regarding the alleged alteration. McIntosh wanted to voir dire Rodin on his background in Graphoanalysis or graphology. At [\*12]: "The trial court granted appellant's motion and permitted cross-examination before any opinion was given. After receiving assurances from Economy that Rodin would not give opinions based upon graphology, the trial court did not permit appellant to ask Rodin to define graphology." The court did not abuse its discretion. At [\*13]: "The trial court was within its discretion to determine that it would not permit a detailed explanation of graphology because Rodin would not be permitted to testify concerning graphology or base his opinions on graphology." Further, the ruling avoided confusion for the jury.

Defendant/appellant offered Andre Moenssens as rebuttal witness to Rodin, but the trial court did not permit Moenssens to testify. Moenssens was offered to impeach Rodin regarding graphology and that Rodin had falsely claimed on his CV that he had studied with or under Moenssens. However, since Rodin did not base his opinion on graphology, that part of Moenssens' testimony was irrelevant. Since defendant had blocked Rodin's CV from being entered into evidence, the claim of study with Moenssens was not in evidence and so was not available to be rebutted. Moenssens was irrelevant on every issue he was proffered for.

COMMENTARY: This is a most instructive case. First, review your expert's entire background before trial in order to have all points of possible attack covered. Second, never abandon a good expert because of irrelevant mudslinging by the opposing expert. Third, make very clear to the trial court what is and is not the basis of your expert's opinion. When I issue a report based entirely on technical and/or scientific reasons, some opposing experts will reply in a completely off the wall fashion that, unlike them, I am not ignorant of graphology or some other aspect of handwriting, such as scientific reports in the medical literature. I immediately tell my attorney/client that, if they had had any viable reply to my opinion, they would have given it. Therefore, the fourth lesson from this case: Never panic whatever reply is mounted against your expert's intelligent and objective opinion, because, if it does not address the expert fact at issue but instead the expert personally, it is a tacit surrender to the opposing opinion and an admission of one's own expert inferiority hiding behind the cowardice of the gossipier.

Regarding the issue of whether Rodin had studied with Moenssens, it could well be in reference to a one-week intensive Moenssens had given to IGAS people at least twice in the 1970s with a test given on the last day. At one time government experts took a one-week course in document examination from a big name federal agency, yet Moenssens never said they were making false claims when putting it on their CV as a course of study with that agency. However, he wrote in a law journal paper that he thought IGAS people were even committing perjury in testifying that studying with him during his one-week intensive in document examination was studying with him. So never take an attack on face value, because a full look into the facts may show the attack to have little to no merit.

699. *State v Evans*, 2001 Ohio 8860; 2001 Ohio App. LEXIS 5918 (OH App. 10 Dist. 2001); mandamus dismissed, *State ex rel. Evans v. Connor*, 2006 Ohio 2871, 2006 Ohio App. LEXIS 2720 (Ohio Ct. App., Franklin County, June 8, 2006)

Three times State's handwriting expert attempted to obtain exemplars from defendant, but each time he refused, once ten minutes before the expert was to testify. The expert then used other writings that were authenticated by a combination of inferences and other facts, which was permissible.

COMMENTARY: The writings used were less than savory in content, but defendant would have avoided the jury seeing them if he had cooperated as he was obliged to.

700. *State v Harper*, 2000 OH App LEXIS 6015 (OH App 2000); affirming sentence after remand, 2001 Ohio 8875, 2001 Ohio App. LEXIS 5969 (OH App 2001)

Detective Thomas Bennett, document examiner for the Columbus Police department, testified that defendant had signed false names to two separate driver license applications and very probably a third. Defendant's photos on all three licenses issued in those names supported Bennett's opinion. All claims of error regarding the expert testimony were found to be without merit. Convictions for multiple counts of forgery and other charges were affirmed with remand for reconsideration of the sentences imposed.

Defendant claimed ineffective assistance of counsel for various reasons. One was that a handwriting expert was not called to testify on his behalf. The Court of Appeal notes: "Moreover, defense counsel not only sufficiently cross-examined the state's handwriting expert, but this record contains no evidence that another handwriting expert would have benefitted defendant's case." Another was lack of challenge to qualifications of the State's experts. The reply from the Court of Appeal was to quote the *Matter of Frederick J.*, 1998 Ohio App. LEXIS 2058:

"*Evid.R. 702* provides that a witness may testify as an expert if the following three conditions are met: (1) he or she is qualified as an expert by virtue of specialized knowledge, skill, experience, training or education regarding the subject matter of the testimony; (2) the testimony relates to matters beyond the knowledge or experience of lay persons or dispels a common misconception among lay persons; and (3) the testimony is based upon reliable scientific, technical, or other specialized [\*22] information. The qualification of an expert depends upon the expert's possession of special knowledge that he or she has acquired either by study of recognized authorities on the subject or by practical experience that he or she can impart to the trier of fact.' *Frederick*, supra. citing *Ishler v. Miller* (1978), 56 Ohio St. 2d 447, 453-454, 384 N.E.2d 296; *Evid.R. 702*."

COMMENTARY: The case text suggests Detective Bennett did quality work. That Ohio extends relevance to dispelling misconceptions the jury may have is an interesting rule. Equally of interest is that the source of expert knowledge is study of recognized authorities or practical experience. Thus knowledge is stressed along with familiarity with the recognized authorities, but not any particular way the knowledge was attained. Too often we accept people as expert because, having attended a particular training or educational institution, "they should know what they are talking about." Unfortunately, blind acceptance of degrees, diplomas or certificates can open us up to expert assistance more damaging than the difficulty that necessitated consulting the expert.

701. *State v Johnson*, 2001 Ohio App. LEXIS 2503 (OH App. 9 Dist. 2001)

“Second, Mr. Johnson points out that the assailant was initially seen rummaging through mailboxes at [\*9] 301 Ira Avenue. When Officer Woodill questioned the individual, he stated that he had written a note to his girlfriend Dot, and put it in the mailbox. The officer retrieved a brief note to ‘Dot’ from ‘William.’ Later testimony from a handwriting expert established that Mr. Johnson did not author the note. Mr. Johnson points to this testimony as evidence that the police apprehended the wrong man. However, at trial the officer testified that he never believed the individual authored the note. The individual identified himself as Roy Lee Brann, a fictitious name, and stated that his nickname was ‘William.’ Officer Woodill testified that he suspected all along that the individual actually had seen the note while rummaging through the mailboxes and used the note as his excuse for being on the premises.”

COMMENTARY: A case of routine admissibility.

702. *State v Karl*, 142 Ohio App. 3d 800, 757 N.E.2d 30, 2001 Ohio App. LEXIS 2373 (OH App. 7 Dist. 2001)

The state did not disclose that its handwriting expert had found consistencies between a forged signature and defendant’s writing. On cross-examination defense counsel endeavored to bring out points favorable to defendant. The prosecutor then sprung the undisclosed opinion, later claiming defense counsel had opened the door. This was found to be error, and the Court of Appeal devotes extensive discussion to the matter. Because of this and other assertions of error that were sustained, the conviction was reversed and the case remanded.

COMMENTARY: The lessons to be learned from the discussion of impermissible non-disclosure might protect an expert witness from participating in an unethical strategy by the client/attorney. One law enforcement expert, hopefully a rarity in this way, told me that in her agency they avoided disclosing the methods and bases of their opinions lest the defendant escape conviction. All experts should bring such unethical and substandard practices by an opposing expert to the attention of their clients.

## 2003

703. *Hampton v Saint Michael Hospital, et al.*, 2003 Ohio 1828, 2003 Ohio App. LEXIS 11743 (OH App. 2003)

In a medical malpractice case the jury found for defendants which was affirmed upon appeal. Vickie Willard testified to some of the doctor’s notes leaving traced writing on a carbonized form but others not. This was not determinative since the form could have been removed from the file. Based on other issues, defendants prevailed with jury.

COMMENTARY: A routine case of admissibility.

704. *Lewis v Smith, et al.*, 2003 Ohio 912, 2003 Ohio App. LEXIS 850 (OH App. 2 Dist. 2003)

“A handwriting expert, Richard Shipp, testified on behalf of the Plaintiff, and gave his opinion that the signature on the questioned document, Ex. 1, was ‘probably’ written by the Defendant, Edward Smith. Mr. Shipp stated that he could not reach [\*5] an opinion beyond a reasonable doubt without an original copy of the questioned document. His opinion was based on

a comparison of known documents containing the original signature of the Defendant and a copy of Exhibit 1. Based on the lack of an original and the disputed authenticity of Exhibit 1, it was not admitted into evidence, and was proffered for the record by Plaintiff. Mr. Shipp further testified that it is possible to scan a signature onto a document, but he found no evidence of tampering with Ex. 1, and that the signature on Ex. 1 was not an exact match with any of the other signatures he examined. Mr. Shipp did not testify as to the authenticity of the signature of Mrs. Smith on Ex. 1. Based on the inconclusiveness of the expert's testimony, the lack of any opinion on the signature of Mrs. Smith, the lack of an original document, the credibility of the Smiths' testimony in which they denied signing the document, and the lack of any witnesses to their signature, the Court did not allow Ex. 1 to be entered into evidence based on *Evidence Rules 1002 and 1003*."

COMMENTARY: I do not believe the expert's opinion was inconclusive. He explained why he could not authenticate the signature and document and provided compelling reasons why. The very fact that the document could not be authenticated served his client well. Would that more often copies were denied admission into evidence when they prevent technical proof of their authenticity. It amazes me how often those who rely on questionable documents are rewarded because they unfortunately lost the original but carefully kept copies enough for everyone.

705. *State v Hughley*, 2003 Ohio 5656, 2003 Ohio App. LEXIS 5051 (OH App. 8 Dist. 2003)  
Convictions for theft, forgery and uttering were affirmed.

"The [forged] check was deposited at Huntington National Bank, the Brookgate branch in Brooklyn. Tony Harris, the security manager for Huntington National Bank, testified that [\*3] the check was deposited into the account of Hughley and that the funds were still in the account. The transaction was caught on film showing Hughley making a deposit....

"The defense called a handwriting expert who testified that the signatures on the check were not written by Hughley. On the other hand, Harris testified it is not uncommon for individuals working with spurious checks to have someone else write on the checks in order to avoid having their handwriting on forged checks. Harris ... investigated cases in which individuals have placed forged checks into their own accounts, as opposed to accounts in a place other than their banking institution."

COMMENTARY: A case of routine admissibility, and from reviewing the next 2004 and 2008 cases of *State v Hughley*, of routine forgery.

706. *State v Moore*, 2003 Ohio 5342, 2003 Ohio App. LEXIS 4797 (OH App. 10 Dist. 2003)

"Ann Dring, a document and handwriting examiner with the forgery and fraud unit of the CPD, testified that Detective Jackson asked her to examine the handwriting on the check and to compare it to known samples [\*4] of appellant's signature. Detective Jackson gave her seven samples of appellant's known signatures. The signatures were on seven different cards used to record appellant's fingerprints between 1994 and 2001. After comparing the writing on the check to the samples, Dring concluded that it was likely that the person who endorsed the back of the check also signed the fingerprint cards. She could not conclude that appellant wrote any of the words on the front of the check."

COMMENTARY: A case of routine admissibility.



707. *State v Samuels*, 2003 Ohio 2865, 2003 Ohio App. LEXIS 2601 (OH App 2003); appeal denied, 2003 Ohio 5232, 100 Ohio St. 3d 1424, 797 N.E.2d 92, 2003 Ohio LEXIS 2615 (OH 2003)

Conviction in jury trial on three counts of aggravated menacing was reversed and remanded on basis that jury had seen rap sheet and that trial judge had not adequately cured the prejudice. Claim of error in admitting handwriting expert evidence was rejected.

Two women found in their residences handwritten notes of a sexual nature describing what the writer wished to do with them. They feared assault. Samuels was arrested after his fingerprint was found on one note. A document examiner, Andrew Szymanski, concluded to a “reasonable degree of scientific certitude” that same person wrote both notes and that “indications” were that Samuels was the writer. At ¶25: “Appellant contends that Szymanski should not have been allowed to testify as an expert, however, because he could not conclusively identify appellant as the author of the notes found in Kierman’s and Ferfolia’s apartments. Appellant contends that Szymanski’s opinion . . . was nothing more than speculation, without any reliable or scientific basis, and, accordingly, did not meet the requirements of Evid.R.702. We disagree.”

At ¶26, Szymanski said that he compared the two notes and appellant’s handwriting samples side-by-side, considering “individual handwriting characteristics, such as letter formation, connecting strokes, slants and spacing....” However, all specific features listed are types of formation; nevertheless, the Court then says at ¶27 that he considered “slant, size relationship, flow and letter formation.” But the opinion was based on specialized knowledge and the examiner’s experience and skill, and so it was not mere speculation.

COMMENTARY: This is another example of how a modest opinion can well be a very reliable, scientific opinion, because good reasons are given for it. The term “indications” seems here to have been used to mean “probably” or “more likely than not” rather than in the technical meaning ASTM terminology assigns to the word. Note that the Ohio Rule 702 matches the Federal Rules numbering. An expert witness or consultant would want to know how to access on the Internet both Federal rules and one’s own state’s current rules for expert evidence.

## 2004

708. *Capital Plus, Inc., v Parker Enterprises Imperial Distribution, Inc.*, 2004 Ohio 3896 (OH Ct. App. 1st App. Dist. 2004)

“{¶¶15} In support of his argument that he had not signed the guaranty, Parker submitted the videotaped testimony of Steven Greene, a forged-document examiner for the Ohio Bureau of Criminal Identification and Investigation. Greene had been allowed to testify as an expert on forged documents in approximately 250 cases.

“{¶¶17} Based upon his examination of those three documents, Greene gave the following expert opinions: (1) that if it was assumed that Parker’s signature on Exhibit 74 was genuine, Parker’s signature on Exhibit 76 ‘[was] probably not genuine,’ and (2) that Parker’s three signatures on the documents were ‘probably identical.’ Greene explained that it was impossible for a person to sign his name the same way twice, and thus that because all three of Parker’s signatures were identical, the signature on Exhibit 76 must have either been cut and pasted or traced. Greene also explained that when he had used the term ‘probably’ in his opinion, he meant

‘more likely than not,’ which would fall somewhere greater than 50% but less than 100%.

“{¶¶18} On cross-examination, Greene testified that it was possible that Exhibit 76 contained an original signature. Greene also examined a copy of the other guaranty that Parker had produced at trial (the one with the date crossed off and the new date written in with Hopper’s initials) and concluded that Parker’s signatures on each guaranty were not identical.”

COMMENTARY: This case offers a couple of nice wrinkles on the usual expert handwriting testimony.

709. *State v Ballance*, Appeal No. C-030822. (OH 1 App. Dist. 2004)

“Ballance argues that the letters could not be tied to him because the expert document examiner at trial could not state that it was Ballance’s signature on the letters. But the expert also could not state that it was not Ballance’s signature. Regardless, even if the trier of fact did not consider the letters, we hold that there is sufficient evidence to support Ballance’s conviction for menacing by stalking, given the phone calls and visits to Rackley’s home.”

COMMENTARY: It seems that the court of appeal considered, at least tentatively, that inability to either identify or eliminate Ballance as writer of menacing letters swung the balance in favor of saying he did.

710. *State v Hughley*, 2004 Ohio 132, 2004 Ohio App. LEXIS 122 (OH App. 8 Dist. 2004)

The case report begins: “Defendant-appellant Kevin Hughley appeals his jury trial conviction for tampering with records in violation of *R.C. 2913.42*. He was acquitted of grand theft auto, forgery, and title law violation.”

Then it describes the handwriting expert’s role: “When the investigator from the [Bureau of Motor Vehicles] went to the clerk of courts for the titles which had been filed for the car, he found a chain of three titles. One title purported to transfer the car from Auto [\*4] World to the Fooses and purported to contain the signatures of the purchasers, John and Kelli Foose. The signatures on each title, however, were in different handwritings, none of which had been signed by the Fooses. On all the documents which purport to contain her signature, Kelli Foose’s name is misspelled. The titles were notarized by defendant’s girlfriend, who, along with defendant, co-owned Unique Auto. n1 The purchasers told the investigator that they had not signed the titles, and a handwriting expert testified that the signatures on the titles did not match the purchasers’ signatures. The expert testified that on one of the titles defendant wrote the signatures purporting to be those of the Fooses.”

Footnote 1 reads: “The girlfriend pleaded guilty to forging the name of Auto World’s owner on the title to John Foose’s car.”

In the end the Court of Appeal decides he was innocent since he did it all to correct clerical errors, not to defraud.

COMMENTARY: One suspects that beating the rap this time encouraged him on the following three prosecutions that are subject of the 2008 appeal case. See Item 724. The girlfriend apparently pled guilty too quickly. Did the fact that Hughley was acquitted for masterminding the forgeries and making one of them himself, thus leaving her holding the bag, affect their relationship?

711. *State v Ware*, 2004 Ohio 6984, 2004 Ohio App. LEXIS 6462 (OH App. 10 Dist. 2004); discretionary appeal not allowed, 2005 Ohio 2447, 2005 Ohio LEXIS 1154 (Ohio, May 25, 2005) Conviction for murder and other crimes affirmed.

At [\*11]: “Keith Jones, an inmate with defendant, testified defendant told him a number of details about the murder. Jones even kept one of many notes written back and forth between him and defendant and turned it over to police. Handwriting expert, Ann Marie Dring, testified that the handwriting on the note was the same as a sample containing defendant’s handwriting.”

Ann Marie Dring testified as State’s handwriting expert. Appeal claimed she did not know source of sample writings and should not have been permitted to testify. She did not have to know that, besides the exhibit she opined about was not admitted into evidence due to defense objection. Challenge to her qualifications was not preserved for appeal.

COMMENTARY: A case of routine admissibility.

## 2005

712. *DiNunzio v Murray*, 2005 Ohio 4047, 2005 Ohio App. LEXIS 3696 (OH App. 11 Dist. 2005); discretionary appeal not allowed, 107 Ohio St. 3d 1685, 2005 Ohio 6480, 839 N.E.2d 404, 2005 Ohio LEXIS 2862 (2005); related proceeding, *DiNunzio v DiNunzio*, 2006 Ohio 3888, 2006 Ohio App. LEXIS 3863 (Ohio Ct. App., Lake County, July 28, 2006)

At [\*17]: “The court accepted the testimony of Dr. Phillip Bouffard, a handwriting expert, to determine that the handwriting on a Mortgage Payment Inquiry Statement from Ohio Savings Bank had a high probability of being DiNunzio’s. The court determined that this writing memorialized the parties agreement as to the full purchase price of the home of \$ 88,600..... The judgment of the Lake County Court of Common Pleas is affirmed.”

COMMENTARY: A case of routine admissibility.

713. *State v Bailey*, 2005 Ohio 4068 (OH 10th App. Dist. 2005)

William Bennett, a document examiner, helped defeat defendant’s alibi for the time of a robbery. Defendant signed on top of another patient’s signature in a log at a medical facility, but several pieces of evidence came together to uncover the ruse.

COMMENTARY: A case of routine admissibility.

714. *State v Guy*, 2005 Ohio 6927, 2005 Ohio App. LEXIS 6241 (OH App. 7 Dist. 2005)

“Finally, a handwriting expert, Steven Greene from the Bureau of Criminal Identification and Investigation, testified in Appellant’s case. Greene testified that the prosecution can order a suspect to provide a handwriting sample for comparison purposes. Using this testimony, Appellant then argued that the ‘confession letter’ was forged, since the state failed to request a handwriting sample from Appellant. (Tr., pp. 299-301.)

“However, Greene indicated at trial that the prosecution contacted him in this case because Appellant’s counsel was arguing that the ‘confession letter’ was manufactured by cutting and pasting. This was the sole reason he was requested to testify. Greene concluded, however, that this was not a manufactured letter. (Tr., pp. 304-307.)”

COMMENTARY: It would seem from the context that the testimony about compelling handwriting samples would have been given on cross-examination. The case demonstrates that a handwriting expert must be expert at more things than handwriting.

715. *State v Martin*, 2005 Ohio 688; 2005 Ohio App. LEXIS 691(OH App. 11 Dist. 2005); discretionary appeal not allowed, 2005 Ohio 3490, 2005 Ohio LEXIS 1525 (Ohio, July 13, 2005)

“In support of his argument, appellant points to the testimony of the state’s handwriting expert, Andrew Szymanski (‘Szymanski’) who testified the purported signatures on the documents were tracings of an original signature. Appellant also points to Szymanski’s testimony that he was not able to identify appellant as the person who made the tracings.

“First, Szymanski testified he could not identify the tracing as having been made by appellant because it was a tracing, rather than a free-hand signature; in other words, the signature did not contain identifiable handwriting characteristics because it was a tracing of someone else’s handwriting.

“Second, the state presented sufficient evidence to overcome appellant’s motion for acquittal on the *R.C. 2925.23(A)* charges. The state presented evidence that appellant was in possession of the drug documents and he returned them to NCS. The state also presented evidence from those who had purportedly signed for the drugs. These [\*14] persons testified the signatures were not genuine. The state also presented the expert testimony of Szymanski. He concluded the signatures in question were traced. Thus, the false statement element of *R.C. 2925.23(A)* was satisfied viz., appellant’s implicit representation that the signatures on the documents were genuine when they were not.”

COMMENTARY: This is a good example of how most often the expert handwriting evidence is one part of the totality of evidence. Discussion of it takes up no more than 1/25 of the entire case report.

716. *State v Robinson*, 2005 Ohio 6286. 2005 Ohio App. LEXIS 5631 (OH App. 11 Dist. 2005); discretionary appeal not allowed, 2006 Ohio 1967, 2006 Ohio LEXIS 1108 (Ohio 2006)

“[T]he instant case turned upon whether the jury believed Dr. Bouffard’s expert witness testimony regarding whether appellant actually endorsed the back of each check. Dr. Bouffard provided his extensive professional background regarding handwriting comparisons. He then provided a step-by-step analysis of his comparison of appellant’s signature and the signature on the back of each check. Ultimately, Dr. Bouffard determined that appellant had signed the back of each check.

“If believed by the jury, Dr. Bouffard’s testimony would establish that, during the civil proceeding, appellant made knowingly false statements [\*19] denying he had seen or endorsed either check. The jury was in the best position to view Dr. Bouffard’s testimony and assign credibility to his expert witness determinations. Thus, we will not substitute our judgment for that of the trier of fact, as the evidence presented by the state was competent and credible. Appellant’s fourth assignment of error is without merit.”

COMMENTARY: A routine case of admissibility and, it seems, routine thoroughness by Dr. Bouffard.

717. *State v Yeager*, 2003 Ohio 1808, 2003 Ohio App. LEXIS 1711 (Ohio Ct. App., Summit County, Apr. 9, 2003); reversed and remanded, 2004 Ohio 2368, 2004 Ohio App. LEXIS 2115 (OH App. 9 Dist.); discretionary appeal allowed, 103 Ohio St. 3d 1431, 2004 Ohio 4620, 814 N.E.2d 493, 2004 Ohio LEXIS 1953 (2004); question certified, 103 Ohio St. 3d 1430, 2004 Ohio 4620, 814 N.E.2d 492, 2004 Ohio LEXIS 1972 (2004); reversed, remanded, 103 Ohio St. 3d 476, 2004 Ohio 5707, 816 N.E.2d 1072, 2004 Ohio LEXIS 2625 (2004); vacated and remanded by The Supreme Court, 9th Dist. No. 21510, 2004 Ohio 2368; rehearing upon remand, 103 Ohio St. 3d 476, 2004 Ohio 5707, 816 N.E.2d 1072, 2004 Ohio LEXIS 2625 (2004); affirmed; 2005 Ohio 4932, 2005 Ohio App. LEXIS 4464; discretionary appeal not allowed, 108 Ohio St. 3d 1473, 2006 Ohio 665, 842 N.E.2d 1053, 2006 Ohio LEXIS 427 (2006); discretionary appeal not allowed, 109 Ohio St. 3d 1482, 2006 Ohio 2466, 847 N.E.2d 1227, 2006 Ohio LEXIS 1476 (2006)

2004 Ohio App. LEXIS 2115:

“The State introduced into evidence two letters; one was sent to Demetrius Yeager, and one was sent to Wilfredo Caraballo. Both of these gentlemen were scheduled to testify against appellant. The witnesses received these letters before appellant’s first trial. The letters questioned why the witnesses were preparing to testify against appellant and contained threats against the witnesses. Mr. Caraballo testified that he felt threatened by the letter he received.

“The State also presented the testimony of Detective Greg Johnson, a handwriting expert, who testified that the two letters contained unique characteristics that matched known samples of the appellant’s writing. Detective Johnson further testified that, in his expert opinion, there was a better than fifty percent chance that appellant wrote the letters to Demetrius Yeager and Wilfredo Caraballo.

“This Court finds that sufficient evidence was presented to support appellant’s one conviction of engaging in a pattern of corrupt activity [\*14] and two convictions of intimidation. Appellant’s ninth assignment of error is overruled with regard to the sufficiency argument.”

2005 Ohio App. LEXIS 4464:

“Mr. Caraballo [\*27] and Mr. Yeager were scheduled to testify against appellant. Both received their letters before the trial began. Mr. Caraballo testified that he felt threatened by the letter he received. Chris Freeman stated that Demetrius was distraught and upset when he came to see him regarding the letter he received. Detective Williams testified that the letters sent to Mr. Caraballo and Mr. Yeager contained unique characteristics that matched known samples of appellant’s handwriting, and gave his expert opinion that it was more probable than not that appellant wrote the letters.”

COMMENTARY: A case of routine admissibility.

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718. *State v Breckenridge*, 2006 Ohio 5038; 2006 Ohio App. LEXIS 5175 (OH App. 10 Dist. 2006); discretionary appeal not allowed, 112 Ohio St. 3d 1472, 2007 Ohio 388, 861 N.E.2d 145, 2007 Ohio LEXIS 311 (2007); subsequent appeal, 2009 Ohio 3620, 2009 Ohio App. LEXIS 3073 (Ohio Ct. App., Franklin County, July 23, 2009)

“For convenience of analysis, we will address appellant’s assignments of error out of numerical order, beginning nonetheless with the first two. These are principally concerned with the trial court’s admission of the expert testimony of a handwriting expert to substantiate the forgery charge. Dr. Bouffard, a forensic document examiner, [\*5] testified at trial about the authenticity of patient’s signatures on various documents collectively identified as State’s Exhibit PE-3. Dr. Bouffard concluded that all patient signatures contained in Exhibit PE-3 were forgeries produced by tracing the original signature of the patient from other documents. At the close of the State’s case, the trial court reconsidered its admission of Dr. Bouffard’s testimony and excluded it. The court limited the forgery charge to the single document constituting in State’s Exhibit PE-4, a timesheet submitted under circumstances that otherwise supported the proposition that the patient’s signature thereon was forged, and that thus did not require the jury to rely on expert handwriting comparisons.”

Defendant also claimed Dr. Bouffard was not properly qualified as an expert. Both points of error were moot since the trial court struck the testimony and instructed the jury to disregard it.

COMMENTARY: No explanation is provided why the testimony was struck.

719. *State v Dach*, 2006 Ohio 3428, 2006 Ohio App. LEXIS 3378 (OH App. 11 Dist. 2006); discretionary appeal not allowed, 2006 Ohio 6171, 2006 Ohio 6171, 2006 Ohio LEXIS 3310 (Ohio, Nov. 29, 2006)

“Under his third assignment [\*19] of error, appellant points out that drugs were never found on his person, in his vehicle, or at his residence. As such, appellant argues, the actual forged prescriptions provided the only probative evidentiary nexus between him and the crimes of which he was convicted. Appellant accordingly assails the reliability of the evidence put forth by David Hall, the state’s handwriting expert.”

At [\*20] a statement of Hall’s qualifications, the week or two Secret Service and FBI courses plus seminars, and some of his testimony are given.

COMMENTARY: A case of routine admissibility which seems to be based on the usual perception that a two-week survey course in document examination is a formal training in document examination. In one case, an attorney attempted to impeach such a witness on teachings from the Secret Service survey course. Two rulings shielded the witness. First, he would have to admit to any material from the course before being asked about it, however authoritative the author. Second, it was so long ago that he took the course that he could not be required to have any recall of any of it, though he based his claim to expert knowledge partly on having learned it all and having used it now.

Please do not write to me about these interesting bits of logic. To revive a saying used when I was a child: “Don’t blame me and don’t ask me; I am just a dumb country boy.”

720. *State v Finley*, 2006 Ohio 2357, 2006 Ohio App. LEXIS 2207 (OH App. 2 Dist. 2006)

“Additionally, preceding Finley’s trial, Knapp met with Finley, Knapp discussed more of Finley’s pro se motions with him, Knapp explained why he thought they should ultimately not be filed, and Knapp filed four motions *in limine*, all of which were granted. During Finley’s trial, Knapp attempted to rebut the State’s case as best he could by objecting at appropriate times, [\*13] by cross-examining most of the State’s witnesses, including all key witnesses, and by presenting expert testimony from a handwriting specialist regarding the letter Galdeen wrote for Finley. All of these facts surrounding Knapp’s representation of Finley suggest that Knapp and Finley communicated well enough for Knapp to prepare and present a competent defense for Finley. Furthermore, these facts show that Knapp’s performance was not deficient....”

COMMENTARY: There are a number of cases where the appeal from a criminal conviction asserts inadequate representation of counsel because a handwriting expert was not retained. In one case the court of appeal denied the error because the defendant wanted an expert to testify he did not write the incriminating document, although he had already admitted doing so.

## 2007

721. *State v Silverman*, 2006 Ohio 3826, 2006 Ohio App. LEXIS 3791 (OH App. 10 Dist. 2006); discretionary appeal allowed, stay granted, 112 Ohio St. 3d 1418, 2006 Ohio 6712, 859 N.E.2d 557, 2006 Ohio LEXIS 3622 (2006); motion granted, 112 Ohio St. 3d 1430, 2007 Ohio 107, 860 N.E.2d 109, 2007 Ohio LEXIS 26 (2007); affirmed, *In re Crim. Sentencing Cases*, 116 Ohio St. 3d 31, 2007 Ohio 5551, 2007 Ohio LEXIS 2567 (2007); post-conviction relief denied, *State v. Silverman*, 2007 Ohio 6498, 2007 Ohio App. LEXIS 5750 (OH App., 10 Dist. 2007); discretionary appeal not allowed, 117 Ohio St. 3d 1459, 2008 Ohio 1635, 884 N.E.2d 68, 2008 Ohio LEXIS 980 (2008); writ of habeas corpus dismissed, *Silverman v. Lazaroff*, 2009 U.S. Dist. LEXIS 74819 (S.D. Ohio, Aug. 19, 2009)

### 2006 Ohio App. LEXIS 3791:

Admission of testimony from two lay witnesses to defendant’s signature was not error since they were “limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of his testimony or the determination of a fact in issue.”

Ray Fraley, who had been chief document examiner for Columbus Police Department, testified as defendant’s handwriting expert. However, the judge discounted his testimony because he had examined photocopies and not originals. The assignment of error of inadequate assistance of counsel that Fraley did not have originals available was overruled since defendant, an attorney, was representing himself at that time and should have seen to it that Fraley had originals.

### 2007 Ohio App. LEXIS 5750:

The same issue of inadequate assistance of counsel was raised in post-conviction review regarding Fraley’s not having originals to examine. The same fact of defendant’s representation of himself at the time Fraley testified was basis for denial of relief.

COMMENTARY: The handwriting expert is often at the affect of one’s own client since most often one can only examine what is supplied by the client. The report in 2006 Ohio App. LEXIS 3791 indicates that Fraley did admirably well with the limited material. I believe the judge should

have considered Fraley's opinion and the objective observations he could compile given what he had to work with. Since banks routinely destroy originals, it might also have been the best available evidence, a possibility defendant, as his own representative at trial, should have ascertained and argued the point if it were so.

We are all victims of the profit-enhancing practices of banks in destroying vital evidence when they know so often these documents are either the subject of litigation or exemplars needed to resolve facts in dispute. Given their focus on their profits versus service to us, at least they should offer us the option of paying to have our financial documents sent to us for our safekeeping. But then maybe they also realize such evidence would often prove their negligence and bad acts.

## 2008

722. *Calame, et al., v Treece, et al.*, 2008 Ohio 4997 (OH App. 9 Dist. 2008)

“{¶¶22} Louise Calame testified that she believed that Blanche had signed her 1989 trust and quit-claim deed and that the sole reason that Blanche's signature looked slightly odd on the documents was because Blanche was 'shaky' when she signed them. Yet, Michael Robertson, an expert document examiner, testified that the 1989 documents contained 'key variations' in the writing, which indicated that Blanche had never signed them. Robertson explained that he compared Blanche's alleged signature on the 1989 documents with multiple examples of her known signature. Robertson acknowledged that a person's handwriting often deteriorates with the onset of sickness and age, but opined that these factors had no bearing in this instance because someone else had signed Blanche's name on the 1989 documents. Thus, Robertson's expert testimony directly conflicted with Louise's assertion that Blanche had signed the 1989 quit-claim deed and the 1989 trust; the same document that named Louise as successor trustee.”

COMMENTARY: The documents gave the deceased mother's estate to one brother, so the disinherited siblings brought the action. The court's finding was forgery as well as undue influence. There may be something missing in the summary of the expert's testimony, because as it stands there seems to be the logic of the vicious circle: Due to variations, someone else wrote Blanche's signature. Blanche's signature could have varied due to poor health, but someone else wrote the signature. Therefore poor health was not a factor. Since poor health does not explain the variations, someone else must have written Blanche's signature.

723. *Knowlton v Schultz, et al.*, 179 Ohio App. 3d 497, 2008 Ohio 5984, 902 N.E.2d 548, 2008 Ohio App. LEXIS 5044 (OH App. 1 Dist. 2008); discretionary appeal not allowed, 121 Ohio St. 3d 1441, 2009 Ohio 1638, 903 N.E.2d 1224, 2009 Ohio LEXIS 945 (Ohio 2009)

At [\*28]: “In their eighth assignment of error, the children contend that the trial court erred in failing to strike the testimony of the estate's handwriting expert, Mary Kelly. They argue that she used 'known samples' provided for her by the defense to compare to the signature on the will instead of using independently verified 'known signatures.' This assignment of error is not well taken.”

At [\*30]: “Kelly, an undisputed expert with many years' experience, testified fully about her methods. She stated that she had compared the disputed signatures with 'known signatures,'



which was the standard procedure for verifying signatures. She had obtained the documents that contained the ‘known signatures’ from a paralegal at the Taft firm who was familiar with the case and with Knowlton’s signature. Kelly examined numerous authenticated documents and stated that it was acceptable to assume the authenticity of the known documents.

“Our review of the record shows that Kelly’s methods were sufficiently reliable to meet the admissibility threshold. Any weakness in her methods went to her testimony’s weight and credibility, not to its admissibility. Therefore, the trial court did not err in admitting her testimony into evidence, and we overrule the children’s eighth assignment of error.”

COMMENTARY: The challenge about “known signatures” presented to Ms. Kelly is common, although it comes in different formulas. The cross-examiner knows very good and well that is how he supplies his handwriting expert with exemplars, if he ever uses one. In the way she answered Ms. Kelly showed familiarity with the applicable rule, and this is a good example to all of us.

724. *State v Hughley*, appeal from *State ex rel. Hughley v Cuyahoga Cty. C.P. Court*, 2008 Ohio 5882, 2008 Ohio App. LEXIS 4923 (OH App. 8 Dist. 2008); 2008 Ohio 6146, 2008 Ohio App. LEXIS 5132 (OH App. 8 Dist. 2008); motion denied, 120 Ohio St. 3d 1503, 2009 Ohio 361, 900 N.E.2d 621, 2009 Ohio LEXIS 351 (2009); writ of habeas corpus denied, *Hughley v S.C.I./Warden Saunders*, 2009 Ohio 1294, 2009 Ohio App. LEXIS 1103 (OH App. Fairfield County 2009); writ of mandamus denied, *State ex rel. Hughley v McMonagle*, 2009 Ohio 1259, 2009 Ohio App. LEXIS 1070 (OH App. 8 Dist. 2009); discretionary appeal not allowed, motion denied as moot, *State v Hughley*, 121 Ohio St. 3d 1439, 2009 Ohio 1638, 903 N.E.2d 1223, 2009 Ohio LEXIS 978 (2009); writ of habeas corpus denied, *Hughley v Marc Saunders Southeastern Corr. Inst.*, 2009 Ohio App. LEXIS 4166 (OH App. Fairfield County 2009); application for reopening denied, 2009 Ohio 3274, 2009 Ohio App. LEXIS 2778 (OH App. 8 Dist. 2009); *State v. Hughley*, 122 Ohio St. 3d 1501, 2009 Ohio 4233, 912 N.E.2d 106, 2009 Ohio LEXIS 2384 (2009); discretionary appeal not allowed, 122 Ohio St. 3d 1524, 2009 Ohio 4776, 913 N.E.2d 459, 2009 Ohio LEXIS 2533 (2009); appeal after remand, 2009 Ohio 5824, 2009 Ohio App. LEXIS 4911 (OH App. 8 Dist. 2009); objection overruled by, motion granted by, writ of mandamus denied, *Ohio ex rel. Hughley v. Ohio Dep’t of Rehab. & Corr.*, 2009 Ohio 6276, 2009 Ohio App. LEXIS 5260 (OH App. Franklin County 2009); writ of mandamus denied, *State ex rel. Hughley v McMonagle*, 2009 Ohio 4543, 2009 Ohio App. LEXIS 3856 (OH App. 8 Dist. 2009)

2008 Ohio App. LEXIS 5132:

In three separate trials, defendant was given these convictions:

Case number 462014: Seven counts of forgery, six counts of uttering and four counts of tampering with records.

Case number 473878: One count each of forgery and uttering.

Case number 481899: One count of a title offense involving a motor vehicle.

The three cases at trial were combined in one case upon appeal. In his fifth assignment of error defendant asserted that the trial court should have provided him with a handwriting expert. However, he refused to provide various exemplars and he had been photographed making the transaction in question. He did succeed in having one felony conviction reduced to a

misdemeanor.

COMMENTARY: In 2008 Ohio App. LEXIS 5132 no handwriting expert testimony at trial is indicated, but presumably there was upon the forgery convictions. However, one wonders whether the man has continued his career in forgery, having defeated most of the accusations against him and costing the tax payers of Ohio large sums for both his prosecution and defense, as well as for his multiple appeals. See Item 710 for a prior prosecution. Did he have other prosecutions that were not appealed?

725. *State v Sands*, 2008 Ohio 6981 (Ct. App. Ohio, 11 Dist. 2008)

“{¶¶70} Mr. Sands asserts that defense counsel failed to object to three areas of testimony by Detective Doyle. The first area concerned the handwritten note setting out the targets’ names and another handwritten note giving the directions to the gun store in Ashland....

“{¶¶71} Apart from the testimony that the detective could identify the documents as being in Ms. Holin’s hand, the balance of the testimony regarding these two documents addressed chain of custody issues.”

COMMENTARY: That was the entire portion regarding handwriting identification.

## 2009

726. *In re Guardianship of the Pers. & Estate of DiCillo*, 2007 Ohio 1785, 2007 Ohio App. LEXIS 1617 (Ohio Ct. App., Geauga County, Apr. 13, 2007); affirmed, *Reeves v Vitt, Executor of the Estate of Betty Jean DiCillo, et al.*, 2009 Ohio 2436; 2009 Ohio App. LEXIS 2051 (OH App. 11 Dist. 2009)

At [\*9]: “Three handwriting experts offered their opinions. Dr. Philip Bouffard, a forensic document examiner, testified for Mrs. Reeves regarding the authenticity of the signature on the will. He compared Mrs. DiCillo’s alleged signature on the will, the mortgage deed, and the note, to her known signatures in six photocopied documents.” He testified to differences, explaining which he considered significant and evidence of falsity and which were not significant.

At [\*11]: “Another expert, Harold Rodin, also a forensic document examiner, testified for Ms. Amato. He examined over twenty documents containing Ms. DiCillo’s known signatures, some of them original documents.” He concluded to falsity as did Bouffard. The report gives detailed observations and reasoning by both Bouffard and Rodin.

“Hans Gidion, also a forensic document examiner, testified as an expert for Mr. Vitt. He examined the same known signatures as Mr. Rodin. Comparing these signatures to the alleged signature on the will, he concluded to a reasonable degree of professional certainty that Mrs. DiCillo ‘had the ability to have [\*13] written the question signature.’ When asked about the lack of the lead-in stroke in the capital letter ‘B’ in ‘Betty’ on the will, he stated that he could not imagine someone who forged another’s signature would omit something so important in the very first stroke of the initial letter. To him, the omission of this important feature raised a ‘red flag’ and led him to believe the signature was actually penned by Mrs. DiCillo *herself*. He also characterized the differences in the letter ‘J’ in ‘Jean’ and ‘D’ in ‘DiCillo’, as well as other differences pointed out by Dr. Bouffard and Mr. Rodin, as mere ‘variations.’ He stated that Mrs. DiCillo was ‘capable of a great range of variation’ in her handwriting.”

The Court of Appeal concluded: “Furthermore, the evidence also shows that on March 19, 2000, the date Mrs. DiCillo and the witnesses allegedly signed the will at her home, she was still recuperating [\*19] in the Geauga Regional Hospital’s sub-acute care center. This evidence corroborates the testimony of both the expert witnesses and Mrs. Reeves that the signature on the will was not authentic.

“In explaining the discrepancy between the signature’s lack of authenticity and the testimony of the two witnesses who testified Mrs. DiCillo signed what they believed to be the will, the trial court reasonably deduced that Mr. Vitt staged a will signing ceremony, where Mrs. DiCillo did, in fact, sign some document on that occasion but not the document purported to be the will presented to the probate court.”

COMMENTARY: Mr. Gidion, who is certified by the American Board of Forensic Document Examiners (ABFDE) and the British Forensic Science Society (BFSS), did not say the signature was genuine, only that it possibly was, which was the crux of the dispute. He did use the two greatest excuses for an opinion against the facts that handwriting experts have ever conceived of: The evidence of falsity is evidence of genuineness since a forger would not make such a silly mistake, and all differences are within the writer’s range of variation. However, one must carefully avoid investigating the actual range of variation shown in the available exemplars. One must just eruditely pronounce the entirely speculative assertion with authoritative pomposity.

Document examiners often appeal to ability or range of variation but never show the reality of these by demonstrative evidence from exemplar writings. Somewhere along the line qualified trainers neglect inculcating into students that an explanation is reasonable only if it is based on demonstrable and verifiable observations, if these observations are interpreted by theories that are well established, and if a clear, complete and logical presentation is offered. Merely saying “range of variation” offers an excuse not an explanation. If ability to do something were any proof of having done it, we are all guilty of murder.

Bouffard is ASQDE, AAFS, ABFDE.

727. *Nicula v Nicula, et al.*, 2009 Ohio 2114, 2009 Ohio App. LEXIS 1773 (OH App 8 Dist. 2009)

“Plaintiff introduced exhibit 1, a ‘Special Proxy,’ purportedly giving an individual named Camelia Damian power of attorney to transfer the property to Virgil, which would pass to his sons, including [\*4] Narcis, after Virgil’s death. Plaintiff testified that he does not know Camelia Damian and never authorized anyone to sell the property on his behalf. He also denied signing the document. The evidence further indicated that the ‘Special Proxy’ was notarized by defendant Lou Ann Nicula, defendant Narcis’ wife. Defendant Lou Ann had been an employee of plaintiff’s former attorney, had access to plaintiff’s signature, and admitted at trial to frequently and improperly notarizing blank documents or documents after they had already been signed.

“Plaintiff further testified that, as a result of the forged Special Proxy, the property was transferred out of his name and he was compelled to travel to Romania to hire attorneys there to clear the title of the fraudulent transfer. He incurred costs of approximately \$ 7,000.

“Plaintiff also presented testimony from handwriting expert Nancy Maxim. According to Maxim, the upper extenders of the signature on the Special Proxy has a blob of ink at the top of the strokes which is indicative that the strokes were not made in a single fluid movement. The

signature on the Special Proxy also has loops whereas plaintiff's known signature is more angular. According [\*5] to Maxim, and to a reasonable degree of professional certainty, the signature on the Special Proxy was not plaintiff's."

COMMENTARY: I reproduce the long passage to give an idea of the complexity of the case. Plaintiff earlier had to file and win a law suit in Romania on the same issues.

728. *R.C. Olmstead, Inc. v GBS Corp., et al.*, 2009 Ohio 6808, 2009 Ohio App. LEXIS 5700 (Oh App. 7 Dist. 2009)

"RCO's handwriting expert testified that she did not believe the signature had been traced or drawn (simulated) by someone other than Mihalich, whom she opined had signed the non-compete agreement. (Tr. 1986-1987). RCO notes that the defense's handwriting expert testified that the signature had not been forged by the owner of RCO, the executive vice president or the other employees of RCO. (Tr. 2768). However, this handwriting expert testified that the signature on the non-compete agreement had been traced or simulated by someone and had not been signed by Mihalich himself. (Tr. 2715, 2724-2727, 2740-2743, 2749-2750). He pointed to hesitation marks, improper overlap and suspicious initiation strokes. It was also pointed out to be suspicious that RCO did not produce the alleged [\*28] May 28, 2002 agreement until November 23, 2005, over a year after filing suit and nearly two years after Mihalich left."

COMMENTARY: Presumably the two experts presented exhibits illustrating why one thought there was no tracing and one thought there was. This would be the only way for us to verify which is correct. Rarely do case reports include illustrative exhibits.

729. *State v Cicerchi*; appeal from *State v Quick*, 2009 Ohio 2124, 2009 Ohio App. LEXIS 1778 (Ohio Ct. App., Cuyahoga County, May 7, 2009); affirmed in part, reversed in part, remanded, 182 Ohio App. 3d 753, 2009 Ohio 2249, 915 N.E.2d 350, 2009 Ohio App. LEXIS 1923 (OH App. 8 Dist. 2009); discretionary appeal not allowed, 2009 Ohio 4776, 122 Ohio St. 3d 1523, 2009 Ohio 4776, 913 N.E.2d 458, 2009 Ohio LEXIS 2589 (Ohio, Sept. 16, 2009)

Defendant's conviction arose out of a scam defrauding homeowners facing foreclosure. They were told that by signing title over to someone with good credit, they could rent their house back and regain title when they were financially able. They never regained title and lost any equity and fees they had paid.

"Loney testified that she was Cicerchi's sister and that Cicerchi had approached her and told her that he and Quick had a client who was losing her house and needed help refinancing. She testified that '[t]hey wanted me to purchase the home that [Hill] lived in so they could, temporarily, I guess, rent it out, so we could rent it out to her so that she could refinance within a year or so after her credit got better and she got back on her feet.' Loney testified that at first she did not agree to the plan, but finally gave in because her brother pressured her. Loney testified that she agreed to the scheme on the condition that Cicerchi take care of collecting a monthly payment from Hill and use that money to pay the mortgage company.

"Loney testified [\*7] that she never signed a purchase agreement for the house and that the purchase agreement offered into evidence bore a signature that was not hers and, in fact, misspelled her first name. n5"

Footnote 5: "A handwriting expert testified that the alleged signatures of Loney and Hill on

the purchase agreement were most likely forged.”

COMMENTARY: A case of routine admissibility.

730. *State v Howard*, 2009 Ohio 2663, 2009 Ohio App. LEXIS 2309 (OH App. 10 Dist. 2009); motion granted by, 123 Ohio St. 3d 1405, 2009 Ohio 5031, 914 N.E.2d 203, 2009 Ohio LEXIS 2803 (2009); discretionary appeal not allowed, 2010 Ohio 188, 2010 Ohio LEXIS 79 (Ohio, Jan. 27, 2010)

Defendant reported that he had found his wife, Delilah, dead and hanging from a nail in the basement, a belt from a robe tied around her neck and to the nail. He appeared unemotional when telling Delilah’s mother and his daughter of the death. Afterwards he could not identify which nail it was.

“Law enforcement collected four undated suicide notes. Each note was separately addressed to appellant and their three children. Appellee’s [State’s] handwriting expert concluded that Delilah ‘probably’ wrote the notes. (Vol. II Tr. 186-87.)”

Likewise, a handwriting expert for the defendant concluded that Delilah wrote the suicide notes. Defendant was convicted of murder and the conviction was affirmed.

COMMENTARY: A case of routine admissibility.

731. *State v Quick*, 2009 Ohio 2124, 2009 Ohio App. LEXIS 1778 (OH App. 2009)

A handwriting expert testified to unauthentic signatures on purchase agreements.

COMMENTARY: A case of routine admissibility.

732. *State v Adam Saleh*, 2009 Ohio 1542, 2009 Ohio App. LEXIS 1407 (OH App. 2009)

“Jeanette Brown, an FBI document examiner, testified that the handwriting on the notes to Weatherspoon and Damron matched appellant’s handwriting. Brown testified that she compiled Exhibit D-2, which showed that appellant ‘prepared comparable portions’ of the letter to Mardis. The name ‘Adam’ is on the [\*16] authorship line.”

COMMENTARY: One suspects the court has summarized Brown’s testimony a bit too much. That appellant “prepared comparable portions” of the letter literally could mean either that he did not prepare the other portions or that his preparing of the comparable portions proved he prepared the entire letter. I assume the latter was meant, but I suspect that Brown left no doubt as to the latter.

## 2011

733. *Lucero v Ohio Dept. of Rehab. & Corr.*, 2010 Ohio 5907 (OH Court of Claims 2010); affirmed, 2011 Ohio 6388 (E) (OH Ct. App. 10 App. Dist. 2011)

Plaintiff, a prison inmate, sued in the Court of Claims for injuries suffered in an attack by another inmate. Part of his evidence that defendants had had notification of the impending attack was a kite claimed to have been signed by its recipient, a prison official who denied the signature was his. Plaintiff called Ray Fraley, formerly document examiner with Columbus Police Department, to testify to the authenticity of the signature on the kite in question. Only a copy of the kite was available, a fact that seems to have been part of the reason the court found for

defendants.

The judgment in favor of defendants was affirmed by the Court of Appeals which gives this more extensive version of Fraley's testimony:

"{¶¶6} To verify the validity of Christman's signature on the kite, appellant presented expert testimony from Ray Fraley, a retired question document examiner for the Columbus Division of Police. Fraley compared the signature on the photocopied kite with several exemplars of Christman's actual signature. He found ten points of similarity between the example signatures and the signature contained on the kite, leading him to conclude that the signature on Plaintiff's Exhibit 1 belonged to Christman. Fraley could not, however, discount the possibility that Christman's signature was copied and pasted onto the kite. Fraley acknowledged that technology allows forgers to copy a signature onto a document as if the signature appeared as if it were part of the document. On redirect-examination, Fraley testified that there was no evidence that Christman's signature had been forged; however, on recross-examination, he admitted that such evidence may be difficult to detect. (Tr. Vol. II, 62.)"

COMMENTARY: Some interesting technical points are raised by ¶¶6. First, finding ten or even a 100 points of comparison does not permit a reliable conclusion of validity until one demonstrates there are absolutely no unexplained significant differences. This burden is usually handled by the almost offhand assertion there are no significant differences, no matter how different or how significant they may be. I assume Fraley performed a complete job of it absent indication to the contrary. Second, the possibility that Christman's signature could have been copied and pasted onto the kite is evidence of nothing in and of itself. If possibilities were evidence of realities, then, as stated elsewhere herein, we have all already been proven to be serial killers. Third, though lack of evidence of forgery is not proof there is no forgery, it certainly proves there is no reasonable support to conclude that there is a forgery. Generally, I suspect this kind of alleged evidential proof is adopted solely in support of the fact-finder's favored fact to be found. Fourth, difficulty of some fact's detection is not evidence of its undetected presence. On redirect the expert should be asked what methods are used to detect such things, did the expert employ such methods, and what were the factual results. Then the pay-off question: Based on your factual findings, was or was not Christman's signature copied and pasted onto the kite? I would also suggest investigating the availability of equipment to perform such operations in the prison in question.

## 2012

734. *Moran v Radtke*, 2012 Ohio 1379 (OH App. 10th Dist. 2012)

Prior to trial Moran's handwriting expert said writing on envelopes containing defamatory statements was disguised and so the writer could not be identified. At trial, Radtke presented a handwriting expert who said Radtke did not write the envelopes. Moran's expert was permitted to give rebuttal evidence against the bases for that opinion but not to go on and identify Radtke as the writer. This ruling was not error because the excluded testimony would have gone beyond rebuttal and into what properly belonged in Moran's case in chief.

COMMENTARY: I suspect much evidence is saved for rebuttal in order to blindside the opponent with it.

735. *State v Hess*, 2012 Ohio 4516 (OH App. 2012)

“{¶¶ 13} Jessica Toms, a forensic scientist at BCI, testified that she had analyzed the handwriting on the checks using the known handwriting samples collected from Hess and Puffenberger. (Id. at 180, 186). Toms testified that she was able to identify Hess as the drafter of all three checks, with the exception of the signature on one of the checks. (Id. at 187-188). Hess testified that she was unable to identify the maker of the signature on that check because it was unnaturally written, ‘I can’t tell whether it’s a tracing, whether the pen was bad, whether it’s an attempt to copy somebody’s handwriting.’ (Id. at 188).”

COMMENTARY: A case of routine admissibility.

736. *State v Kerr*, 2012 Ohio 3360 (OH App. 8 Dist. 2012)

“{¶¶ 28} In the instant case, the record supports the trial court’s qualification of Jessica Toms as a handwriting expert because she clearly had specialized knowledge, skill, experience, training, and education that assisted the jury in understanding the evidence.

“{¶¶ 29} Kerr argues that Toms testified that ‘no conclusion’ could be drawn regarding the author of Carnegie’s signatures on the checks admitted as evidence, as well as on the documents. Kerr argues that Toms exceeded the proper testimony when she added her own opinion to explain her conclusion. The State argues that offering her opinion is exactly what Toms was asked to do in her testimony and did not exceed her expertise in doing so. ‘The trial court has broad discretion in the admission of evidence, and unless it has clearly abused its discretion and the defendant has been materially prejudiced thereby, an appellate court should not disturb the decision of a trial court.’ *State v. Joseph*, 73 Ohio St.3d 450, 460, 653 N.E.2d 285 (1995), citing *State v. Maurer*, 15 Ohio St.3d 239, 473 N.E.2d 768 (1984), paragraph seven of the syllabus. Furthermore, Kerr has failed to cite any authority to support his argument that Toms exceeded her expertise other than his making a conclusory statement, contrary to App.R. 16(A)(7).

“{¶¶ 30} Regardless, Kerr has failed to show how he was prejudiced by Toms’s testimony.”

COMMENTARY: Passages like this are interesting in that it was found that the expert’s testimony did not prejudice the defendant. Ordinarily we might think that, if it had had no effect prejudicial to the defendant, it would not have been offered. However, it seems only to mean whether the trial judge, who hears the case, and the appeal justices, who review it, think that the prejudice is legally outside the permissible limits of the rules of evidence, either in itself or as weighed against other factors. I wonder whether two masters of the law of evidence could independently give reasonably close explanations of what are semantic perplexities to us lay people.

737. *State v Ward-Douglas*, 2012-Ohio-4023 (Ct. App. OH 2012)

It was not ineffective assistance of counsel in how state’s document examiner, Julia Bowling, was cross-examined nor not to call a defense examiner. Also, use of defense eyewitness expert was not ineffective assistance of counsel.

COMMENTARY: Bowling stated that defendant had disguised her exemplar writings but was still identified as having written some illegal prescription forms. The eye witness expert offered what seem to be very common sense methods for photo line-ups.



738. *State v Widmer*, 2012 Ohio 4342 (OH Ct. App. 12 Dist. 2012)

Defendant was convicted of murdering his wife. I found description of the investigation more fascinating, and hopefully far more faithful to reality, than TV's various CSI shows. Details of the investigation are followed by the story how it played out at trial and upon appeal. I found the lengthy case report more interesting than most. The document examiner testified on the prosecution's motion to quash defense subpoena for production of employment records of a prosecution employee-witness. The entire description of examination and testimony is this:

"{¶ 126} [Richard] Shipp, a forensic document examiner who was retained to do a handwriting comparison and analysis, testified that he had compared the June 25, 1996 application to 'known documents' containing Braley's handwriting. These known documents included: a sheet of paper from 2010 that Braley had written and printed his name on numerous times, a 2005 Loveland income tax return signed by Braley; a sofa express invoice signed by Braley; Braley's W-4's from 2000 and 2004; performance reviews from 2005 and 2007 signed by Braley; and an April 2002 employment verification request signed by Braley. Shipp testified that although he was able to do a comparison with the June 25, 1996 application, he was not satisfied with the quantity and quality of the 'known documents' that he had for comparison with the application because the 'known documents' did not have like words and letter combinations. Nonetheless, Shipp was able to reach the 'probable opinion that [Braley] signed [the application].' However, Shipp's opinion was inconclusive as to whether Braley printed the information contained within the application. He stated, 'I wasn't satisfied with enough agreement or differences to identify or eliminate [Braley] as the printer of that document and that's why I say I'm inconclusive.'"

The subpoena was quashed for a number of reasons.

COMMENTARY: As soon as a handwriting expert is stumped because of lack of exact same letters, words, combinations of same, or style of writing, you know the expert is permanently stumped by lack of mastery of the human graphic motor sequence. It seems this means that many, if not the majority, of them are permanently stumped but are unaware of it. I suspect this inadequacy comes from the fallacy that a two-year training followed by a two-year apprenticeship is the only way to learn document examination. One is in danger of knowing only what one knows that there is to be known and thus concluding that one already knows all that is worth knowing. There are several scientific, technical and artistic disciplines concerned with handwriting, each with a body of professional literature that in scientific and technical treatment might surpass that portion of the literature of document examination that treats of handwriting. The latter is nothing to be sneezed at, to resurrect another cliché from my childhood.

### *3. Ohio Supreme Court.*

1994

739. *State v Loza*, 71 OH St3 61, 641 NE2 1082 (OH 1994)

Court of Appeals had affirmed conviction and death sentence for four counts of aggravated murder, as did the Supreme Court. Court's syllabus states in part: "(10) admission of expert testimony that defendant wrote inculpatory letters was not plain error; (11) seizure, copying, and



admission of letters from jail did not violate defendant's First or Fourth Amendment rights...." Defendant had been observed loading trash into someone else's dumpster. Incriminating evidence was recovered, leading to Loza's arrest. At trial Stephen Greene gave expert testimony identifying Loza as writer of letters admitting culpability for the murders. At page 1101: "Because the defense did not object to this testimony at trial, reversal requires a finding of plain error." There was none. Greene was qualified. "Additionally, 'It is a well settled rule in this state \* \* \* [that handwriting comparisons] \* \* \* may be made \* \* \* by persons skilled in handwriting, such as are usually called experts.' *Bell v. Brewster* (1887), 44 Ohio St. 690, 696, 10 N.E. 679, 683."

COMMENTARY: Ohio is thus another state not just refusing to reinvent the wheel but also refusing to deny its existence.

## 2001

740. *In re Election Contest of December 14, 1999 Special Election for the Office of Mayor of the City of Willoughby Hills*, 91 Ohio St. 3d 302, 2001 Ohio 45, 744 N.E.2d 745, 2001 Ohio LEXIS 1002 (OH 2001)

"At trial, Dellas introduced evidence from a document and handwriting expert that Pogany's and Penfield's applications for absentee ballots had been signed by persons other than Pogany and Penfield. The expert further testified, however, that the identification envelopes [\*6] for the completed absentee ballots of Pogany and Penfield contained their genuine signatures. Neither Pogany nor Penfield testified."

The trial court invalidated their votes but the Supreme Court reinstated them.

COMMENTARY: A case of routine admissibility.

## 2006

741. *State v Jackson*, 100 Ohio St. 3d 1514, 2003 Ohio 6460, 800 N.E.2d 33, 2003 Ohio LEXIS 3283 (Court of Common Pleas for Trumbull County 2003); affirmed, 107 Ohio St. 3d 300, 2006 Ohio 1, 839 N.E.2d 362, 2006 Ohio LEXIS 1 (Ohio 2006); stay granted, 108 Ohio St. 3d 1408, 2006 Ohio 216, 841 N.E.2d 314, 2006 Ohio LEXIS 46 (2006); post-conviction relief denied, 2006 Ohio 1007, 2006 Ohio App. LEXIS 919 (Ohio Ct. App., Trumbull County, 2006); certiorari denied, *Jackson v. Ohio*, 126 S. Ct. 2359, 165 L. Ed. 2d 285, 2006 U.S. LEXIS 4408 (U.S., 2006); reopening denied, *State v. Jackson*, 2006 Ohio 5083, 2006 Ohio LEXIS 2712 (Ohio 2006) 2006 Ohio LEXIS 1:

"Jackson next asserts ineffective assistance in defense counsel's failure to object to admission of letters allegedly written by Roberts to Jackson without requiring authentication of her writings as a predicate to admission. In contrast, Jackson points out, his letters to Roberts were admitted only after authentication of his [\*43] authorship was established by testimony of a handwriting expert.

"Detective Monroe did properly identify the letters pursuant to *Evid.R. 901(A)*. Roberts told Monroe that she had written the letters. They were found in the trunk of Roberts's car in a bag with Jackson's name on it. They were signed 'Donna Marie.' They had a return address of a post

office box registered to Roberts. Counsel were not ineffective in failing to object to the admission of Roberts's letters to Jackson, for they were properly authenticated, and defense counsel used them as part of their trial strategy to bolster Jackson's claim of self-defense."

COMMENTARY: The report describes use of some ways to authenticate writings other than by expert testimony.

## 2009

742. *Ohio State Bar Association v Trivers*, 123 Ohio St. 3d 436, 2009 Ohio 5285, 917 N.E.2d 261, 2009 Ohio LEXIS 2829 (OH 2009)

In disciplinary action an attorney was suspended for one year because he had notarized nine documents without seeing the person sign them. Respondent denied his signatures which, however, a handwriting expert authenticated.

COMMENTARY: A case of routine admissibility.

## 2011

743. *Disciplinary Counsel v Karris*, 129 Ohio St. 3d 499, 2011-Ohio-4243 (Ohio 2011)

One count in a disbarment action involved a fraudulent loan. "{¶¶ 9} Rebecca Barrett, a forensic document examiner for the Ohio Bureau of Criminal Identification and Investigation, testified that the signatures purporting to be that of the borrower's wife on the instruments in question were not, in fact, her signatures. Based upon her analysis of the documents, she testified that there is 'a high degree of certainty' that the signatures are in the borrower's hand."

COMMENTARY: A case of routine admissibility.

## II. OKLAHOMA CASES.

### *1. Oklahoma trial courts.*

## 2005

744. *Legacy Vision, LLC, v Gary Yeamans*, W.D. OK June 6, 2005

Cited by Robert J. Muehlberger in his 2006 AAFS presentation as ruling that handwriting expert could testify to similarities or differences but not offer an opinion.

### *2. Oklahoma Court of Criminal Appeals.*

## 1992

745. *Stiles v State*, 1992 OK CR 23, 829 P2 984 (OK Court of Cr App 1992)

Appellant claimed error because he could not cross-examine a bail bondsman and handwriting expert on their pending criminal cases, but such was irrelevant since both were giving objective evidence. At page 994: "The testimony of the handwriting expert also was objective evidence. He

compared appellant's known handwriting sample.... By graphic display before the jury, comparisons were made of the characteristics of each handwriting sample.... Because of the objective nature of the testimony of each of these witnesses, evidence of outstanding criminal charges against them was irrelevant."

COMMENTARY: At least one modern court recognizes the objective nature of correct expert handwriting evidence. The very objectivity of the testimony as described supports its scientific reliability.

746. *Jones v State*, 917 P. 2d 976 (OK Ct. Cr. App. 1995)

At page 979: "Furthermore, a review of the record demonstrates surprise occurred.... Second, defense counsel was surprised by the testimony of Mike Hull, the forensic document examiner. Hull was asked to conduct handwriting comparisons on November 2, just four days before trial. Although defense counsel may have been aware that the analysis was going to take place, the record clearly demonstrates defense counsel had not been advised of the results, nor had he had time to prepare for Hull's testimony."

Footnote 2 states: "In addition to their late endorsement, Mike Hull and Vida Boyett were not included on the State's list of 83 witnesses which was provided pursuant to Art. 2, §§ 20 of the Oklahoma Constitution."

COMMENTARY: The case report set forth one of the more flagrant trials by surprise one will come across. I believe that not only should the courts of appeal give relief of reverse and remand, but there should be a personal financial sanction for prosecutors who practice such tactics. Only a personal cost for gross misconduct will eradicate it from those whose professional ethics are of no deterring efficacy.

## 1995

747. *Omalza v State*, 911 P. 2d 286 (OK Ct. Crim. App. 1995)

In footnote 26: "Floyd also directs our attention to testimony by J. Michael Hull, a forensic document examiner with the Oklahoma City Police Department. Hull testified that State's Exhibits Nos. 67 and 68, a notebook attributed to Jones and a known sample of Jones' handwriting, respectively, were both written by Jones. Contained in the notebook was a notation that Jones would no longer sell drugs to the victim, Kim Grant. No contemporaneous objection was raised to this testimony, therefore the testimony is considered properly admitted."

COMMENTARY: If the author of *Ecclesiastes* had been an attorney, he would have added: "There is a time to object and make motions, and there is a later time to wish you had."

## 2007

748. *Wood v State*, 2007 OK CR 17, 158 P.3d 467, 2007 Okla. Crim. App. LEXIS 17 (OK Crim. App. 2007)

At [\*42]: "Nor can Tremane [Wood] show that trial counsel was ineffective in failing to impeach accomplice Brandy Warden. At trial, Brandy denied writing two letters containing statements that the writer did not believe that Tremane killed Wipf. A handwriting expert

testified at the evidentiary hearing that she had compared those letters with a known sample of Brandy's handwriting, and concluded that all three letters were written by the same person. Though Brandy denied writing the letters, she admitted at trial that she had made similar statements. For that reason, there is no basis to find that the outcome of Tremane's trial would have been different had counsel further impeached Brandy."

COMMENTARY: A case of routine admissibility.

### *3. Oklahoma Supreme Court.*

1998

749. *State ex Relations Oklahoma Bar Association v Spadafora*, 960 P. 2d 365, 1998 OK 40 (OK 1998)

In a disbarment action a document examiner testified that, after a document had been certified filed, a handwritten entry was altered, probably by Spadafora.

COMMENTARY: A case of routine admissibility.

2004

750. *State ex Relations Oklahoma Bar Association v Dobbs*, 94 P. 3d 31, 2004 OK 46 (OK 2004)

A document examiner testified that a client's signature Dobbs was accused of forging was written by the client. Dobbs was still suspended from practicing law for two years and a day.

COMMENTARY: A case of routine admissibility.

### JJ. OREGON CASES.

#### *1. Oregon Courts of Appeal.*

2008

751. *State v Dubois*, 221 Ore. App. 644; 191 P.3d 670; 2008 Ore. App. LEXIS 1132 (OR App. 2008)

Handwriting expert identified defendant's signature on release of automobile although she denied it after having admitted it.

COMMENTARY: A case of routine admissibility.

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## KK. PENNSYLVANIA CASES.

### *1. Pennsylvania trial courts.*

#### 1996

752. *In re Anonymous*, No. 61 DB 95, 35 Pa. D. & C. 4th 9 (PA Ct. Common Pleas 1996)

At page 13: “(21) A written report from [I], certified forensic document examiner, [J], was admitted into evidence and considered with full force and effect as though [I] had testified at the hearing to the facts and conclusions set forth in the report.”

The findings were that two clients had not signed a release agreeing to a settlement and that the attorney had signed for them, which they said was without their knowledge or consent.

COMMENTARY: The case report also states that the expert was fully qualified. In this compilation I have considered that the admission in trial of an expert’s report, affidavit or declaration in lieu of testimony, as if the expert had so testified or would so testify, was equivalent of an actual testimony in person.

#### 2001

753. *In Re: Nomination Petition of Victor R. Delle Donne*, 779 A.2d 1; 2001 Pa. Commw. LEXIS 355 (PA Commw. 2001)

Donne’s name was ordered not to appear on the ballot for judge since enough signatures on his petition were invalid for one reason or another. One signature was struck on the testimony of Michelle Dresbold, objector’s handwriting expert.

COMMENTARY: A case of routine admissibility.

#### 2003

754. *Nebesho v Brown and Milos*, 2004 Pa.Super. 83, 846 A.2d 721, 2004 Pa. Super. LEXIS 308 (Superior Ct PA 2003)

In reviewing a complex equity action the Superior Court summarily states at [\*23]: “Under difficult circumstances, the Chancellor fashioned relief in as an equitable a manner as could be devised.” The central issue of fact was whether Nebesho’s signature on a deed, which conveyed her half interest in their family home to her first husband Brown, was forged as she claimed. At [\*13-\*14]: “Brown next argues that the court erroneously concluded that Nebesho established by clear and convincing evidence that the transfer of the property was a fraudulent transfer. He relies on his own self-serving statement that Nebesho appeared at the notary’s office and executed the deed, as well as, the statement by the notary public ‘that she would not have notarized a document unless both subscribers appeared before her and presented photo identification.’ Brown’s brief at 11. He further relies on the testimony of his handwriting expert, Curtis Baggett, who opined that Nebesho’s signature on the deed was in fact Nebesho’s. He disregards the fact that the Chancellor found that Nebesho’s handwriting expert, John S. Gencavage, was ‘more credible and persuasive’ and that his testimony was corroborated by testimony other than ‘the

self-serving testimony of Brown, which ...we did not find credible.’ C.O. at 7.

“Although Brown acknowledges that witnesses’ credibility and the weight to be given their testimony is for the fact-finder to decide, he focuses on the Chancellor’s failure to announce that Nebesho met her burden of proof by clear and convincing evidence. However, he cites no authority requiring the Chancellor to enunciate such a statement and we conclude that a failure to make this statement is not error.”

COMMENTARY: There is no question that expert handwriting evidence is admissible as reliable. Curtis Baggett is the same person who is in the case *Brown v State*, 1999 Tex. App. LEXIS 805, discussed infra, and cases discussed earlier where he was disqualified, such as *Wheeler v Olympia Sports Center, Inc.*, U.S. District Court, District of Maine, Docket No. 03-265-P-H. October 12, 2004.

## 2006

755. *In Re: The Nomination Papers of Monica A. Treichel as Candidate for State Representative in the 149th Legislative District; Joseph I. Breidenstein, Petitioner*; 898 A.2d 650 (PA Commonwealth Ct 2006)

“The parties presented a joint stipulation, indicating that 140 signatures were uncontested and that 419 signatures were challenged. (Ex. P-3.) Objector then presented 652\*652 the expert testimony of William Ries, a forensic document examiner, in support of Objector’s signature challenges. Based on the evidence presented, this court makes the following determinations.”

COMMENTARY: The Objector was a Republican candidate already on the ballot who wanted to keep Treichel off the ballot, but the effort failed. However, the case report suggests the judge relied on Ries’s opinions.

## 2008

756. *In re Dennis Morrison-Wesley*, 946 A.2d 789 (PA Commonwealth Court 2008)

In a challenge to a nomination petition, objector presented testimony by a document examiner who said addresses of different persons were written by the same person.

COMMENTARY: A case of routine admissibility.

## 2011

757. *Commonwealth of Pennsylvania v Orie*, 2011 PA Super 190 (PA Superior Court 2011)

On the next to last day of the trial defense offered exculpatory documents. After a recess, the Commonwealth presented the testimony of document examiner George Papadopolous “that Jamie Pavlot’s signature on both Exhibits 101-B and 110 had been cut from other documents and pasted on. He specifically concluded that the signature on Exhibit 110 was lifted from Exhibit 101-A. Defense counsel declined the opportunity to cross-examine the expert.” The Superior Court viewed this fraud on the trial court seriously, denying the defendant’s motion to overrule the trial court’s ruling of a mistrial and order for a retrial, but ordering the retrial to proceed.

COMMENTARY: Reading the scathing assessment of the deliberate placing of falsified documents into evidence, one would wish that every such attempt would be met with like sternness from all other courts of law.

## *2. Pennsylvania Courts of Appeal.*

### 2001

758. *In Re: Estate of Orlando Presutti, Deceased; Appeal of Zarko*, 2001 PA Super 264, 783 A.2d 803, 2001 Pa. Super. LEXIS 2627 (PA Super. 2001)

Sandy Stevens testified as handwriting expert for contestants of will. She was found qualified and her opinion credible. She found more than 70 discrepancies between the signature on the disputed will and decedent's exemplar signatures, and she believed that appellant wrote the signature. Findings of the trial court were affirmed.

COMMENTARY: Ms. Stevens had been certified by National Bureau of Document Examiners, which was founded by Felix Klein, now deceased.

### 2004

759. *IN RE Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004*; 865 A.2d 8 (2004); affirmed, 588 Pa. 450, 905 A.2d 450, 2006 Pa. LEXIS 1546 (PA 2006); certiorari denied, *Nader v Serody*, 127 S.Ct. 995, 166 L. ED. 2d 712, 2007 U.S. LEXIS 123 (U.S. 2007)

NOTE: Duplication occurred in discussion of this case. See year 2006 under PA Supreme Court.

A panel of twelve judges conducted a line-by-line review of nomination petitions for Nader and Camejo for President and Vice President. Of 25,697 signatures reviewed, 18,818 were valid, and nearly two-thirds of the signatures were struck. "[T]his signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court. The conduct of the [Appellants] through their representatives (not their attorneys) shocks the conscience of the Court."

The assessment of costs of \$81,102.19 against Appellants was upheld. \$38,267.00 of this amount was for handwriting expert witnesses.

COMMENTARY: There have been many cases through the years where handwriting experts have contributed to the frustration of fraudulent petitions for election to public office. For example, see *Hamburg v State*. There are a number of reported cases in the Commonwealth courts that name some document examiners who testified in different hearings on nomination papers around the state: Renee Martin, J. Wright Leonard, William J. Kelly, Edward J. Kelly, and Michelle Dresbold. Ms. Martin was one of the founders of NADE, and Ms. Leonard is a board certified member.

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## 2005

760. *Rothrock v Rothrock Motor Sales*, 53 Pa. D. & C.4th 411, 2001 Pa. Dist. & Cnty. Dec. LEXIS 258 (2001); 2002 PA Super 303, 810 A.2d 114, 2002 Pa. Super. LEXIS 2722, 19 I.E.R. Cas. (BNA) 214 (PA Super. 2002); appeal granted, 574 Pa. 704, 833 A.2d 138, 2003 Pa. LEXIS 1804 (2003); affirmed, 2005 Pa. LEXIS 2154 (Pa., Sept. 28, 2005)

Plaintiff was fired by defendant who introduced two warning slips purportedly signed by plaintiff. The slips were to prove cause for the firing. A handwriting expert testified plaintiff's signature was forged. This evidence was properly admitted since it showed defendant had fabricated evidence.

COMMENTARY: A case of routine admissibility.

## 2007

761. *Capital Academy Charter School v Harrisburg School District and Harrisburg School District Board of Control*, 934 A.2d 189, 2007 Pa. Commw. LEXIS 579 (Common. Ct. 2007)

Capital Academy presented a petition to appeal denial of its charter school status. The District contended enough signatures were invalid or illegible to make the number of signatures less than required. At trial, J. Wright Leonard testified that 215 lines were partially or entirely in the same hand and that 111 were illegible. The trial court disagreed, conducted its own line-by-line examination, and struck only five as illegible and 39 as being in the same hand. The trial court thus found there were sufficient signatures on the petition.

COMMENTARY: Ms. Leonard is a member of National Association of Document Examiners.

762. *Martin Schafer, Jr., deceased/Judy Schafer, Petitioner v Worker's Compensation Appeal Board, et al., Respondents*, 935 A.2d 890, 2007 Pa. Commonw. LEXIS 609 (Commonw. Ct. of PA 2007)

Workers' Compensation Judge [WJC] found for Respondents that decedent had signed an affidavit not to be an employee for purposes of the Workers' Compensation Act. Robert J. Phillips was Claimant's handwriting expert and opined that decedent's purported signature "was very likely executed by Claimant," while Respondents' handwriting expert, John S. Gencavage, opined decedent had signed the affidavit. "The WJC is the ultimate fact finder and may accept or reject the testimony of any witness in whole or in part...and will not be disturbed on appeal."

COMMENTARY: Expert evidence was by reports but considered as if presented live. It is included as representative of the many cases otherwise omitted. Additionally, it is one of the few case reports I have found that involve family similarity in handwriting. Claimant was decedent's widow who brought action for benefits as his widow.

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## 2008

763. *In re Nomination in re Tony Payton*, 945 A.2d 281, 2008 Pa. Commw. LEXIS 130 (2008 PA Commw. 2008); affirmed, 945 A.2d 162, 2008 Pa. LEXIS 505 (PA 2008)

At [\*16]: “With the assistance of the handwriting expert Ms. [Michelle] Dresbold as needed, the Court reviewed the remaining line-by-line challenges. In many cases the Court was able to find upon view that signatures were or were not genuine. When in doubt, the Court heard and weighed testimony from the expert witness.”

COMMENTARY: A case of routine admissibility.

## 2009

764. *In Re: Estate of Marjorie J. Cruciani. Appeal Of: Jeannine M. McCullough*, 2009 PA Super 228, 986 A.2d 853, 2009 Pa. Super. LEXIS 4476 (PA Super. 2009)

At [\*4]: “Lastly, with regard to the testimony of a handwriting expert, we have held that where the testimony is corroborated by probative facts and circumstances surrounding the will such may overcome the testimony of the subscribing witnesses. *In re Kirkander*, 326 Pa. Super. 380, 474 A.2d 290, 293 (Pa. Super. 1984)”

At [\*7]: “The last witness to testify for petitioner was Edward J. Kelly, whose qualifications as an expert were stipulated to by Appellant. Mr. Kelly described the methodology utilized in examining the December 15, 2005, document as ‘image-enhanced comparative analysis’ (simple magnification), which consisted of reviewing photocopies of six checks containing decedent’s signature. These known signatures were compared with the signature on the document dated December 15, 2005. The expert testified that the differences between the check signature and will signature were ‘profound.’ N.T., 9/30/08, at 120. As a result, he opined, within a reasonable degree of forensic scientific professional certainty, that decedent’s signature on the December 15, 2005, document was ‘a forgery[.]’”

COMMENTARY: The terminology attributed to the handwriting expert is idiosyncratic, a term beloved of some experts. One wonders at the awesome phrase needed to describe a complicated magnification if a simple one is “image-enhanced comparative analysis.”

### *3. Pennsylvania Supreme Court.*

## 2001

765. *In Re: Nomination Petition of Mary Flaherty for Office of Judge of the Commonwealth Court v. Appeal Of: John A. Hanna*, 564 Pa. 671, 770 A.2d 327, 2001 Pa. LEXIS 956 (PA 2001)

“[\*18] Here, both Candidate’s handwriting expert, John S. Gencavage, and Appellant’s handwriting expert, Michelle Dresbold, testified concerning the authenticity of Lawrence McNish’s signature. The Commonwealth Court found that Mr. Gencavage’s testimony was more credible than that of Ms. Dresbold....”

Dresbold gave reasons why she considered McNish’s signature on the petition false, such as slowly written, style of letters, breaks and endings of strokes. Gencavage said he could not tell

whether the signature was genuine. The Supreme Court overturned the Commonwealth Court's decision that the signature was genuine in part based on Gencavage's testimony:

"Comparing the testimony elicited by these two experts, we believe that Ms. Dresbold presented substantial evidence to support Appellant's claim that the signature of Mr. McNish was improper. On the other hand, we find that Mr. Gencavage's opinion as to whether Mr. McNish's signature was genuine was completely equivocal. Such equivocal testimony is simply inadequate to support the Commonwealth [\*21] Court's determination that Candidate sufficiently proved that Lawrence McNish's signature was genuine, and therefore, we strike Lawrence McNish's signature from the petition."

COMMENTARY: The case report suggests neither expert had more than the voter registration signature to compare to the petition signature. If so, both should have been discounted since there was no way to tell the degree of variation or consistency in McNish's signatures.

### 2003

766. *Commonwealth v Watkins*, 577 Pa. 194, 843 A.2d 1203, 2003 Pa. LEXIS 969 (PA 2003); reargument denied, 2004 Pa. LEXIS 729 (Pa., Mar. 23, 2004); certiorari denied, *Watkins v. Pennsylvania*, 2004 U.S. LEXIS 7179 (U.S. 2004)

A handwriting expert identified defendant's signature on a confession form.

COMMENTARY: A case of routine admissibility.

### 2004

767. *Commonwealth v Williams*, 524 Pa. 218, 570 A.2d 75, 1990 Pa. LEXIS 53 (1990); affirmed, 581 Pa. 57, 863 A.2d 505, 2004 Pa. LEXIS 3239 (PA 2004)

"Appellant's next two issues focus on letters he allegedly wrote to Marc Draper while in prison, in an effort to convince Draper to lie at trial. Appellant argues these letters were improperly admitted into evidence at trial because they contained prejudicial references to drug activity and to appellant's incarceration....

"With respect to appellant's argument that the letters contained prejudicial references to prior bad acts, it was made clear to the jury that the references to drug activity were merely part of the 'story' concocted by appellant in order to disassociate himself from the murder....

"Appellant argues the prosecutor's questions to the handwriting expert prejudiced him by suggesting he had tried to disguise his handwriting when he provided samples to the expert. The prosecutor's questions were asked in response to the expert's description of how he is able to detect attempts to alter or disguise one's handwriting; when the prosecutor asked if the expert could ascertain whether appellant had attempted to disguise his writing, defense counsel objected and the trial court sustained the objection. The expert never answered the prosecutor's questions, and the jury was later instructed counsel's questions do not constitute evidence."

COMMENTARY: It is a very rare appeal or supreme court case report where the handwriting expert may not testify re disguise. The rule is that it may be argued that a defendant who disguises handwriting in giving exemplars shows consciousness of guilt.

## 2006

768. *Commonwealth v Coleman*, 2006 PA Super 214, 905 A.2d 1003, 2006 Pa. Super. LEXIS 2130 (PA Super. 2006); appeal denied, 2007 Pa. LEXIS 968 (PA 2007)

Gus Lesnevich testified defendant signed the name of a deceased person in making claim in Medicaid services that were federally funded. Defendant's husband blew the whistle on her. Signatures of other persons were identified as genuine.

COMMENTARY: A case of routine admissibility.

769. *IN RE Nomination paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004...*, 588 Pa. 450, 905 A.2d 450, 2006 Pa. LEXIS 1546 (PA 2006); certiorari denied, *Nader v Serody*, 127 S.Ct. 995, 166 L. ED. 2d 712, 2007 U.S. LEXIS 123 (U.S. 2007) NOTE: Duplication occurred in discussion of this case. See year 2004 under PA Courts of Appeal.

A panel of twelve judges conducted a line-by-line review of nomination petitions for Nader and Camejo for President and Vice President. Of 25,697 signatures reviewed, 18,818 were valid, and nearly two-thirds of the signatures were struck. "[T]his signature gathering process was the most deceitful and fraudulent exercise ever perpetrated upon this Court. The conduct of the [Appellants] through their representatives (not their attorneys) shocks the conscience of the Court."

The assessment of costs of \$81,102.19 against appellants was upheld. \$38,267.00 of this amount was for handwriting expert witnesses.

COMMENTARY: There have been many cases through the years where handwriting experts have contributed to the frustration of fraudulent petitions for election to public office. For example, see *Hamburg v State*, 820 P2 523 (WY 1991), discussed later. There are a number of reported cases in the Commonwealth Court that name some document examiners who testified in different hearings regarding Nader and Camejo around the state: Renee Martin, J. Wright Leonard, William J. Kelly, Edward J. Kelly, and Michelle Dresbold.

## MM. RHODE ISLAND CASES.

### *1. Rhode Island trial courts.*

## 2004

770. *State v Picerno*, 2004 RI Super LEXIS 33 (RI Superior Ct Providence 2004); 2004 RI Super LEXIS 57 (RI Superior Ct Providence 2004)

2004 RI Super LEXIS 33:

Defendant denied initialing only two of several paragraphs on a form waiving constitutional rights. At a suppression hearing he testified in such a way as to lose credibility with the court even before cross-examination. At [\*31]: "Although his counsel attempted vigorously to prod defendant Picerno to state unequivocally that he did not initial paragraphs '7' and '8' of the rights

form, the most that defendant Picerno would say is that he is 'pretty sure' he did not make the initials." Completing his testimony, he moved for a continuance of the suppression hearing to call a handwriting expert to show he did not initial the two paragraphs in question. The State did not oppose the motion.

Pauline Patchis issued a "preliminary opinion" for defendant that he had not made the disputed initials, but for reasons unknown she did not testify. Defendant then produced Charles Shure to testify. At [\*39] and following Mr. Shure comes in for critical review of his qualifications, and his opinion is rejected by the judge. The state produced a Mr. Breslin as an expert in rebuttal, who said he had no idea whether the initials were genuine or not. Neither witness was ruled to be an expert, there being no need to since unlike a jury the judge would not be misled by claims to expertise. Apparently neither witness reviewed the excellent papers in the professional literature on the examination of initials, because the court found there was no reliability to the exercise. However, in the instant case, both witnesses acknowledged Picerno's known initials had no consistency, presumably meaning stable traits reliable for identification.

Although Mr. Shure comes in for extended disparagement of his qualifications, the bottom line is that the court gives him and Mr. Breslin the same evaluation at [\*55]: "Without a credible opinion from Mr. Shure as to authorship and with an inconclusive opinion about authorship by Mr. Breslin, this Court was deprived of any scientific testimony that could assist it in further addressing the question defendant Picerno tried to raise concerning the initials. All that remained of the experts' testimony was their musings about the physical similarities and dissimilarities between the known and questioned writings -- comparisons that the Court had done already, even prior to the reopened suppression hearing, without them. Neither of the experts' pedestrian comparisons in this regard was at all helpful to the Court.

"Absent any assistance from the expert witnesses, this Court simply returns to its earlier view of the evidence surrounding execution of the rights form. See section B.1., supra (detailing evidence of waiver). Nothing about the initialing of the rights form itself changes this Court's view of evidence."

2004 RI Super LEXIS 57:

This report deals solely with whether wiretap surveillance evidence ought to be suppressed.

COMMENTARY: Mr. Shure had had Picerno make exemplars to be used as comparison material. This violated the *post litem motam* rule, but there is no mention that the State objected. Mr. Shure was a member of NADE, but as of this writing records show he was never certified by NADE. Though it is not true, as the Court was led to believe, that one can join merely by paying dues, the organization is open to the neophyte whom it endeavors to nourish into becoming better educated and eventually certified. NADE certification is a rigid process requiring a written professional report, both written and oral tests, as well as documented experience and letters from attorney/clients verifying claimed experience and competence. I say this to warn the reader that representations about an organization in the case law might well be the false fruit of incomplete or even incorrect information from unknowing or biased witnesses, as it was the fruit of woefully incomplete and incorrect information in this case.

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## *2. Rhode Island Supreme Court.*

### 1995

771. *State v Scholl*, 661 A.2d 55 (RI 1995)

At page 58: “In addition, the state presented the testimony of Clarissa DeAngelis, a professional document examiner, who testified that in her opinion Scholl was the person who signed his name in the log book on the night in issue.”

COMMENTARY: A case of routine admissibility.

### 1997

772. *State v Griffin*, 691 A.2d 556, 1997 RI LEXIS 101 (RI Supreme Ct 1997)

In affirming murder conviction, Supreme Court of Rhode Island held that “record evidence supported admission of expert testimony that defendant was author of threatening letter that was sent to prosecution witness while defendant was awaiting trial.” This case report has a literary expression reminiscent of late Nineteenth and early Twentieth Century prose combined with later idiom. There was “the factual-trident that pinned Griffin to the murder.” He killed victim because he “took mortal offense at this query.” “Some of Griffin’s compeers later heard him crow about the killing.” That is only at page 557, and the entirety makes for delightful reading.

At page 558: “Griffin assigns error to the admission of handwriting analyst’s testimony.” He denied having written the exemplars used. “Comparing the handwriting in the warden’s letter to the script on the waiver-of-rights form, the expert found multiple points of agreement.... His testimony limned the idiosyncracies of Griffin’s penmanship, noted a number of significant comparable features, and concluded that Griffin was the author of the witness-threatening letter. In this court, as below, Griffin tries to undercut this opinion by identifying a host of perceived cracks in the expert’s authentication edifice. But his arguments go to the weight of the expert’s remarks, not to their admissibility.” Then ending at page 559, there was ample opportunity for cross-examination and to “emphasize any infirmities.... In brief, we see no basis for Griffin’s suggestions that the trial justice flouted Rule 901.”

COMMENTARY: I just had to quote the charming prose at length. Bottom line: The testimony is reliable and admissible.

### 2005

773. *McBurney v Roszkowski*, 875 A.2d 428 (RI 2005)

Document examiners testified for both parties as to the authenticity of McBurney’s signatures on key documents:

“Both parties also presented expert witnesses to testify about the authenticity of the signatures on the general release and confidentiality agreement. First, Pauline Patchis, a board-certified document examiner, testified that after examining and comparing the signatures on the release to five known signatures of McBurney, she was of the opinion that the questioned signature on the general release and confidentiality agreement was not genuine. Patchis noted, however, that she

had not examined originals of the contested document, instead comparing only copies of the release to known samples of McBurney's writing.

"The defendant presented Alan T. Robillard as an expert in questioned document examination. Robillard, an FBI-trained 435\*435 handwriting analyst, testified at length about his training and the methodology utilized in his field, including the highly technical protocol employed by handwriting and document analysts. Robillard testified that he subjected the documents in question to the standard protocol for evaluating questioned handwriting. Unlike Patchis, Robillard conducted his tests and examination on the original document, which, he said, allowed him to analyze the pressure placed on the pen used when the questioned signatures were written. Robillard opined that each of McBurney's signatures on the general release and confidentiality agreement were, in fact, authentic."

At page 435 the evaluation given this testimony by the trial judge is quoted: "In the opinion of this Court, having heard the testimony, having reviewed the extensive exhibits forming part of Mr. Robillard's testimony, having heard the methodologies utilized by him, the scientific investigation by him, and being satisfied that his testimony was far more credible than that of Pauline Patches [sic], \* \* \* the Court finds the testimony of Mr. Robillard to be far, far more convincing."

Then at page 437 the Supreme Court of Rhode Island summarizes it all: "That finding was based largely upon the expert testimony of Alan T. Robillard, who performed a methodical and highly technical analysis of McBurney's handwriting sample. The trial justice determined that Robillard's testimony regarding the signatures on the documents in question was inherently more reliable than that offered by McBurney's expert, Pauline Patchis, whose methods of examination were less impressive to the hearing justice. Rejecting her testimony, the hearing justice concluded, 'Patches [sic] \* \* \* essentially, among other things, testified almost to the effect that what she does is look at the signatures and note various things[.] \* \* \* [A]most anybody could do the same thing[.]'"

COMMENTARY: I give these extensive quotes to emphasize how technology can make a very deep impression. From what one can read of Mr. Robillard, it is all honest and excellent application of relevant technological tools. Unfortunately, there are a number of document examiners who seem to have discovered the magical impression that technological wizardry can have on the layperson. I have had a number of cases where the opposing examiner offers a lists of technical tools turned into gadgetry, asserting they were essential to the discovery of otherwise undiscoverable hard facts. Yet the special facts each tool is designed to discover are not reported, and the purported facts reported would not require the technology claimed to have been used, and at times such technology might even hamper the discovery. Yet I have not noticed that cross-examining attorneys bring out that any of this is mere showmanship. I suspect the victim of the scientific rabbit's hat fears there might really be an awesome and devastating reality hidden in the mounds of forensic manure.

It was not reported from whom Ms. Patchis obtained her board certification, but the report hints that they need to stiffen up their scientific and technical requirements.

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774. *State v Andujar*, 899 A.2d 1209 (RI 2006)

Alan Robillard testified that defendant wrote a threatening letter. Additionally, by indentations and tear patterns he proved it came from a legal note pad of defendant's.

COMMENTARY: A case of routine admissibility with an added bonus of technical excellence.

2008

775. *Estate of Louis J Giuliano, Sr.*, 949 A.2d 386, 2008 R.I. LEXIS 74 (RI 2008)

"Curtis Baggett, a handwriting expert, compared documents containing the decedent's known signature with the signature on the will, and he concluded that the signature on the will was not the decedent's own. He offered testimony concerning his methodology in examining the signatures and his findings on the technical [\*5] differences between the shape of letters in the known signatures and the signature on the will. Mr. Baggett testified that it was his opinion that the signature on the will was not the true signature of Louis J. Giuliano, Sr....

"The judge concluded that neither side's handwriting expert was particularly persuasive, but he added that he thought the methodology that plaintiffs' expert used was more generally accepted in the field. He stated that the testimony of the three attorneys established that the signature on the will was 'more probably than not' the signature of the decedent."

After some legal proceedings, plaintiff moved for summary judgment, and Mr. Baggett's affidavit was insufficient to defeat the motion. The hearing justice gave a sardonic evaluation of Baggett's affidavit as a bald statement: "Well, that's helpful.... How can I say, 'Oh, wow, this dispute is genuine.'?" The court of appeal reversed the granting of summary judgment since the hearing justice ought not have considered the evidential weight of what is described as an evidentially weightless affidavit.

COMMENTARY: Hopefully at the retrial the evidential emptiness of the expert's expertise would have weighed less with the fact-finder than it did with the court of appeal.

776. *Notarantonio v Notarantonio, et al.*, 941 A.2d 138, 2008 R.I. LEXIS 27 (RI 2008)

The case report begins: "The trial justice quoted Shakespeare to characterize the family dispute that engendered this lawsuit: 'How sharper than a serpent's tooth it is to have a thankless child.' n3 Regrettably, it is apparent that this once close-knit family has become irreparably fractured in a way that judicial opinions are not likely to repair."

Footnote 3 reads: "William Shakespeare, *King Lear*, act 1, sc. 4."

At the very end the entire discussion of handwriting evidence is given: "With respect to the purported January 1995 transfer of the seventeen shares of JGF stock, the trial justice accepted the testimony of Mary's daughters that the signature on the document was not Mary's. The trial justice also found credible the testimony of a handwriting expert who opined that Mary's signature on the document was not genuine. Additionally, the trial justice noted that Mr. Foley testified at trial that he had not witnessed Mary sign the document."

COMMENTARY: A case of routine admissibility, and also, it seems, routine wrenching of family relations when greed for material inheritance outpaces the value one holds for the family's genetic and social ties. When court personnel, attorneys and experts witness the triumph of the

former over the latter with its sad consequences, hopefully it inspires them to cherish the fragile, but far more precious, treasure of family love.

777. *Shorrock v Scott*, 2007 R.I. Super. LEXIS 56 (RI Super. 2007); affirmed, 944 A.2d 861, 2008 R.I. LEXIS 46 (RI 2008)

At [\*3]: “Three witnesses testified at trial: plaintiff, defendant, and a handwriting expert, Marc J. Seifer, Ph.D., who was called by Shorrock and testified that defendant’s signature on the promissory note was genuine and that defendant was the author of an addendum that set forth the interest owed on the loan.”

COMMENTARY: A case of routine admissibility.

## NN. SOUTH CAROLINA CASES.

### *1. South Carolina Supreme Court.*

#### 1999

778. *State v Council*, 335 S.C. 1, 515 S.E.2d 508 (SC 1999)

At page 8: “Further, the testimony of bank employees and handwriting experts established appellant had forged three of Mrs. Gatti’s checks and cashed them at various banks.”

COMMENTARY: A case of routine admissibility.

#### 2006

779. *State v Davis*, 364 S.C. 364, 613 S.E.2d 760, 2005 S.C. App. LEXIS 84 (S.C. Ct. App., 2005); vacated in part, reversed, and remanded, 371 S.C. 170, 638 S.E.2d 57, 2006 S.C. LEXIS 373 (SC 2006)

A handwriting expert witness for the State testified that the signature and date on a letter were in defendant’s handwriting.

COMMENTARY: A case of routine admissibility.

#### 2011

780. *State v Brandt*, 713 SE 2d 591, 393 S.C. 526 (SC 2011)

At page 534: “In April 2001, Marvin Dawson, a private document examiner, analyzed the letter produced by Brandt and concluded the signature on the letter was not genuine. Dawson further determined that the letter was not produced on the computer or typewriter used by the secretary at Edisto Farm Credit, was not sent from the fax machine at Edisto Farm Credit, did not have a watermark like other Edisto Farm Credit paper, and had microscopic security dots, which represented technology that post-dated the letter.

“After Dawson’s review, the letter was sent to the United States Secret Service for further analysis. Susan Fortunato, a document analyst for the Secret Service, analyzed the Edisto Farm letter. During her examination of the letter, Fortunato discovered a serial number in a pattern of



yellow dots. Based on these dots, Fortunato determined that the letter had been produced on December 10, 2000 around 3:00 p.m. using a Xerox machine with the serial #043391 located at a Kinko's copy shop in Augusta, Georgia. Fortunato also learned that the copy machine was not installed in the Kinko's shop until January 6, 2000. Because the pattern of yellow dots did not exist until 2000, Fortunato definitively testified that the document 'didn't exist until the year 2000.'"

COMMENTARY: The pattern of yellow dots becomes visible under a blue light. Special codes identify the meaning of each pattern. Defendant did win something because the South Carolina Supreme Court reduced his conviction from a felony to a misdemeanor.

## OO. SOUTH DAKOTA CASES.

### *1. South Dakota Supreme Court.*

#### 1997

##### 781. *State v Loftus*, 1997 SD 131 (SD Supreme Court 1997)

The concurring opinion begins at ¶31: "The majority declined to undertake this question, but I believe it is of sufficient importance to merit discussion and concern." Detective Kendall Remboldt testified he was not a handwriting expert, but the Trial Court permitted him to give his opinion after he 'compared writings in a notebook discovered during the search of Loftus' residence and writings found on a cooler door at the liquor store.' The sole purpose was to tie Loftus to the scene of one of the crimes. The rule is that only an expert can give a handwriting opinion from comparison without prior knowledge of the suspect writer's handwriting. Further, the two writings were of unknown origin, though Loftus' wife testified it was her notebook, and items in the notebook confirmed her claim."

At ¶35 the discussion concluded: "What saves this from being prejudicial error, was the other circumstantial evidence in this case came along with Remboldt's candid admission before the jury that his analysis was not very beneficial because he lacked the expertise to furnish the very opinion he rendered."

COMMENTARY: South Dakota rules of evidence permit expert handwriting evidence, and the concurring opinion can be argued to be based on its reliability being assumed.

#### 2010

##### 782. *State v Corean*, 791 NW 2d 44, 2010 SD 85 (SD 2010)

Footnote 9: "In addition to her hearsay objection, Corean objected to this letter, pointing out that at the post-trial hearing Tiegen testified it was his handwriting but he did not remember writing the letter. Corean also pointed out that the words '(James and Jamie.) Savvay?' are lighter in color, and Tiegen testified that he could not remember if he wrote those words. But there was evidence from which the jury could have concluded that Tiegen authored the entire letter. Janice Tweedy, a forensic document examiner, testified: 'I looked at that area because it

was lighter than the other area around it.’ She opined: ‘I didn’t see any evidence of it being a simulation or a forgery.’”

The judge trial ruled the letter to be relevant since it continued the conspiracy that lead up to the crime charged by instructing a co-conspirator to withhold information from that coconspirator’s attorney.

COMMENTARY: Tweedy showed good judgment in investigating anomalies on her own and thus preempting an unexpected challenge.

## PP. TENNESSEE CASES.

### 1. Tennessee Courts of Appeal.

#### 2000

783. *Ali v Professional Real Estate Developers, Inc.*, 2000 Tenn. App. LEXIS 97 (Ct App TN 2000)

“With respect [\*4] to the authenticity of Ms. Ali’s signature on the power of attorney, two expert witnesses testified at trial. Thomas Vastrick, a forensic document examiner, testified that he simply did not know whether the purported signature of Ms. Ali on the power of attorney was genuine. Jane Eakes, a certified document examiner specializing in handwriting, testified as to her belief that the signature on the power of attorney was, in fact, the signature of Ms. Ali.” Since Ms. Ali presented only her own testimony that her signature was forged, she failed to carry her burden of proof.

COMMENTARY: Vastrick, a gentleman, wrote a fine little book for the lay person, *Forensic Document Examination Techniques*, IIA Research Foundation, 2004. Eakes is a member of National Association of Document Examiners and a friend of the author.

784. *In Re: Estate of Blanche Marie (Buckner) Peery, Perkins v Swafford, et al.*, 2000 Tenn. App. LEXIS 117 (TN App. 2000); permission to appeal denied, 2000 Tenn. LEXIS 495 (TN 2000)

Larry Miller testified to arthritic handwriting, and Shaneyfelt said it was forgery. Wife of nephew said arthritis messed up the handwriting. Forgery was found by jury and upheld with costs to appellant.

COMMENTARY: Routine case of admissibility, and seemingly routine “expert” unawareness of what medical science has shown about handwriting and various illnesses through research. Miller is a member of National Association of Document Examiners and author of an authoritative text in forensic photography. In a similar vein to thinking effects of arthritis are indicia of forgery, a colleague in New Jersey told me of an opposing examiner who in several cases explained all indicia of forgery as caused by a grainy desk top. This information should console attorneys and litigants who cannot prevail on the truth but that with enough money they can shop and eventually find someone who is willing to prove the genuine to be false and the false to be genuine. New Jersey ought not be the only state afflicted with many grainy desks.

785. *Estate of Acuff, et al., v O'Linger*, 56 S.W.3d 527, 2001 Tenn. App. LEXIS 238 (Ct Ap TN 2001); subsequent appeal, 2003 Tenn. App. LEXIS 664 (TN Ap 2003); appeal denied, 2004 Tenn. LEXIS 190 (TN 2004)

The discussion has to do with 2001 Tenn. App. LEXIS 238.

The factual issue takes little space, but legal issues are extensive and detailed. After Acuff's death, O'Linger recorded two deeds purportedly signed by decedent in her favor and notarized. The factual issue was whether the deeds bore forged signatures. An advisory jury returned a unanimous verdict in favor of plaintiffs and against O'Linger. The judge had instructed the jury that the burden of proof was by a preponderance of the evidence, and the judge accepted the jury's advisory finding and ruled in favor of plaintiffs that the deeds were forged. At [\*3] the Court of Appeals states: "It is easy enough in this case to identify the controlling issue. The two deeds are either forged or they are not forged. That having been said, the complications begin." In simplistic summary, the Court of Appeals found that the proper standard was proof by clear and convincing evidence, and thus it reversed the Trial Court and dismissed the suit.

The expert handwriting evidence, which was offered only by plaintiffs, is considered at [\*37] *et seq.*: "After a very extensive 'gate keeping' hearing under principles established by the Supreme Court in McDaniel v. CSX Transportation, Inc., 955 S. W. 2d 257 (Tenn. 1997), the trial judge allowed the testimony of Thomas Vastrick and Brian Carney, offered by the plaintiffs as handwriting analysis experts on the basis that their testimony could 'substantially assist the trier of fact' under Tennessee Rules of Evidence 702 and 703. While the Tennessee standard for admissibility set forth in *McDaniel* is more restrictive than the rule under its federal counterpart, we are still bound by the general rule that questions regarding the admissibility, qualifications, relevancy and competency of expert testimony are left to the discretion of the trial court. McDaniel v. CSX Transportation, Inc., 955 S.W.2d 251, 263 (Tenn. 1997); State v. Ballard, 855 S.W.2d 557, 562 (Tenn. 1993). We see no abuse of discretion in the admission of the testimony of Vastrick and Carney. Both of these handwriting analysts testify that the signatures on the two deeds in issue are in fact tracings made from a genuine signature of John Acuff appearing on an exhibited document in the case called a 'landlord waiver.' This testimony subjected to vigorous cross-examination is to be weighed along with all other evidence by the trier of fact under the 'clear, cogent and convincing' evidence rule."

The Court of Appeals considered this expert testimony to be no more than "preponderance of evidence" because of the judge's instruction to the jury. Further, at [\*57], it is stated that the experts' opinion would entail "an active conspiracy" among five people. "The evidence of the plaintiffs and particularly the expert handwriting analysis from the witnesses Vastrick and Carney casts troublesome shadows in the case but considered as a whole, the evidence in the opinion of this Court does not establish that it is 'highly probable' that the deeds of August 16, 1996 and September 30, 1996 are forgeries."

The subsequent appeal only considered whether the trial court upon remand could grant defendant's Motion for Discretionary Costs. Upon appeal by plaintiffs, the award was reversed with costs of the appeal charged to appellee/defendant.

COMMENTARY: First, the Court of Appeals upholds the trial court's finding that the two experts were reliable under standards more restrictive than the corresponding Federal standards, and that makes the case well worth citing to support admissibility in future hearings. Second, once more a Court of Appeals equates our term "highly probable" with "clear and convincing." Third, I find it hard to believe that these two experts in tandem did not provide evidence that was at least in itself "highly probable," if not "definite," of a tracing, particularly since they identified the source signature. The decision does not say why the case was dismissed by the Court of Appeals rather than remanded to permit plaintiffs to make their case by the higher standard, particularly since the Court of Appeals sets forth how very confusing and contradictory were Tennessee rulings on the issue of burden of proof in such cases.

I have been informed that Denbeaux was offered as an expert witness at trial by defendant. He was excluded but permitted to cross-examine plaintiffs' handwriting expert at trial. My informant said the man did a poor job of it.

## 2003

786. *In the matter of the Estate of Joan Forshea Pearson*, 2003 Tenn App LEXIS 716 (TN App Jackson 2003)

At [\*4]: "Finally, the trial court allowed the filing of a report from Thomas W. Vastrick, a Forensic Document Examiner...." Vastrick concluded from handwriting examination that decedent had only written payee's name and payor's signature on a check in question. From ink examination he concluded that all other entries on the check were written with one or more other pens than decedent used. The Court of Appeals adopts Vastrick's conclusions at [\*10]: "The only portions of the check written by Pearson were the name of the payee and Pearson's signature." The case was remanded.

COMMENTARY: This is one case of many where the expert did not testify but the expert opinion was received and relied on by the Court. It can be reasonably argued that such cases also support the thesis of general judicial finding of legal and technical/scientific reliability for the field of forensic handwriting examination. However, I do not include such cases except for this illustrative example.

787. *State v Goltz*, 111 S.W.3d 1 (Ct. Cr. App. TN 2003)

Conviction was reversed and remanded due to prosecutor's improper final argument. He in effect testified to the quality and credibility of his witnesses, as at page 7: "...Robert Muehlberger, probably one of the finest handwriting analysts in the country...."

COMMENTARY: Whatever the needed bolstering for other prosecutorial witnesses, I suspect no one in the profession would think Muehlberger either needed or would appreciate such improper argument in his favor.

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## 2005

788. *Estate of Alfred O. Wooden, et al. v Hunnicutt, et al.*, 2005 Tenn. App. LEXIS 646 (TN App. 2005); appeal denied, 2006 Tenn. LEXIS 353 (TN 2006)

The will in question was found to be a forgery by clear and convincing evidence although the handwriting expert could not be so sure. “[Vastrick] could not say beyond a reasonable doubt that Testator did not sign the Quitclaim Deed, however, he did testify that there were significant differences, including the skill level used, between the verified signatures and the signature on the Quitclaim Deed and that was a very strong indicator of non-authorship.”

COMMENTARY: In ASTM standard for expressing opinions in document examination, “indications” is less assured than “probable.” In an older case it was said that the jury could be certain even if the handwriting expert was not. See, *U.S. v Currier*, 454 F.2d 835 (1 Cir 1972), at page 837: “Although the government expert could not testify with certainty that the erased words were written by the defendant, there was sufficient evidence for the jury to believe they were.” And they had to believe it beyond a reasonable doubt.

## 2009

789. *Mitchell v Madison County Sheriff's Department, et al.*, 325 S.W.3d 603 (TN Ct. App. 2009)

The case report gives an extensive and penetrating analysis of both the discharging of Mitchell from the Sheriff's Department and the hearing before the civil service commission. An anonymous postcard was received by a member of the department and a second by the wife of another. If one knows the proper way to investigate anonymous notes, also called poison pen letters, one will find this investigation to be a comedy of errors. Michael Robertson was contacted by the department to identify the writer of the anonymous postcards. An array of anomalies undermined his identification of Mitchell as the writer, one being that on the day the cards were mailed from another state, Mitchell was on duty at the local jail.

Thomas Vastrick was document examiner for Mitchell. His opinion is described as simply being that Mitchell could not be either identified or eliminated as the writer.

COMMENTARY: This case offers several salutary lessons for handwriting experts. Though there was no court hearing, only one before the civil service commission, I include the case as it so excellently demonstrates what happens when an expert inexpertly fails to follow proper and long established procedure in examining anonymous notes. It also is an excellent example of factual assessment and logical analysis by a court of appeal. It seems to me, as a lay person in regards to the law, it is also an excellent piece of legal reasoning. I suspect Vastrick's evidence included much more than a mere saying he could not say whether Mitchell wrote the notes but he would have explained why it was not scientifically or technically possible. It might be like the experience I had in court once when I said the suspected writer could not be identified. The judge said I did not have an opinion. I responded I most certainly did, namely that an expert could not identify the writer and for very sound reasons. My friend and colleague Jacqueline Joseph of Portland, OR, wrote a fine paper for *NADE Journal* on the unidentifiable handwriting and what makes it so. I would dearly like to know Vastrick's explanation for his opinion.

790. *Thompson, Individually, and as Executor of the Estate of Gertrude Thompson, Deceased v. Thompson, et al.*, 2009 Tenn. App. LEXIS 99

A handwriting expert testified that checks in question were written by decedent.

COMMENTARY: A case of routine admissibility.

## 2010

791. *Mid-south Industries, Inc., v Martin Machine & Tool, Inc., et al.*, 342 S.W.3d 19 (TN App. 2010)}

Spydell Davidson, a defendant/appellant, alleged that Ms. Jane Eakes and Ms. Ann Cherry had proven fraud. However, the court said: “We disagree with Mr. Davidson’s interpretation of the testimony given. Certified document examiner, Ms. Jane Eakes, testified that Mr. Davidson and witness Ann Cherry signed a May 16, 1996 agreement which allowed either party to terminate the agreement....

“We find no support for Mr. Davidson’s argument that either Ms. Eakes or Ms. Cherry, ‘testified that the contract proffered by [Mid-South] was essentially a fraud[.]’ In fact, neither witness used the word ‘fraud’ in her testimony, and Ms. Eakes even pointed out that she was not testifying as to the circumstances surrounding the document’s execution.”

COMMENTARY: A hazard of any profession that uses many words to express many thoughts is that inevitably the slower witted will misunderstand, and the overly clever will misrepresent, what one said. Ms. Eakes is a member of NADE.

## 2012

792. *Middle Tennessee State University v Simmons*. No. M2011-00825-COA-R3-CV. (TN Ct. App. Nashville 2012)

Thomas W. Vastrick was court-appointed expert to examine signatures related to a student loan that Simmons claimed were forged. Vastrick concluded they were written by Simmons, and the court denied Simmons’ request to obtain his own handwriting expert, though he could depose Vastrick who later testified in court.

COMMENTARY: I have had a number of cases of student loans where the alleged student borrower denied the signatures. These were all by small private schools who put the loans through U.S. Department of Education that directly pays the school and then goes after the “student” to collect. In one case the “student” was imprisoned all during the time he was supposed to have applied for the loan and attended the school, an incidental fact that did not impress the collectors at the U.S. Dept. of Education. The Government places the burden of proof on the alleged borrower, the school being off the hook as far as I can tell. Thus it is an easy, failsafe method to earn payment for services never rendered. Apparently, when things get hot, the management closes that school and opens another somewhere else.

793. *Shearer, et al., v Mcarthur, et al.*, No. M2012-00584-COA-R3-CV. (App. TN 2012)

“The plaintiffs’ final witness was a handwriting expert, Roy Cooper, Jr., who testified that, with machine copies such as the exhibit of the option agreement, an expert could only testify

with 85 to 90% certainty. He was asked to compare the signatures on the option agreement with examples of the signatures of Mr. Young and Mr. McArthur and opined with 85% certainty that the signatures on the option agreement had been written by Mr. Young and Mr. McArthur.”

COMMENTARY: It is ill advised to testify to a numerical, percentage opinion in handwriting identification. The only situation where one could offer reliable evidence for the number or range of numbers chosen is where physical impossibility to sign is proven, giving 100% certainty of non-signing.

Let me give a little bit of refinement to that “only.” Hypothesize that we are asked whether Mr. X signed a document in dispute. We have 100 exemplar signatures by Mr. X. For any given trait we will see it in a certain number of exemplars and not see it in the rest. So if only 20 exemplars have the very beginning of the signature with a hook, we know as a mathematical certainty that 20% have the initial hook and 80 % do not.

However, we cannot claim that, among all of Mr. X’s exemplar signatures existent in the world at this moment, 20% begin with a hook and 80% do not. Why? Because whatever the cause of his making an initial hook, it is not an inevitable, physical law of nature that he does or does not do so. Additionally, on any given signature he may deliberately make an initial hook or deliberately refrain from making one. Therefore, since the writing activity, as are all human acts, is either entirely or partially subject to choice, we only have moral certainty regarding the probability of the initial hook appearing in any future writing signature by Mr. X.

This does not mean handwriting identification is entirely subjective or unreliable, rather it means we are engaging in a kind of assurance that governs more than 90% of our life choices and of which we are mostly oblivious, especially if we are hidebound, died-in-the-wool, highly conservative, nose-to-the-computer-calculator mathematicians. When Mrs. Browning said, “How do I love thee? Let me count the ways,” she did not give a single mathematical datum. Yet only a fool would doubt the genuineness and depth of her love.

## *2. Tennessee Supreme Court.*

1994

794. *State v Hutchison*, 898 SW 2d 161 (TN 1994)

At page 168: “In addition to the Rule 16 violation, the defendant objects to the admission of the letters, claiming that only because of the court’s prejudicial error was the State prepared to introduce them. Before a previous, aborted trial, the defendant sought reimbursement for a document examiner in an ex parte hearing pursuant to T.C.A. §§ 40-14-207(b). Hutchison alleges that the court inadvertently acknowledged this request at the end of the prior trial, thus putting the State on notice of the need for its own examiner. With no record of the previous trial, we cannot review the matter. We do, however, observe that the State originally called Dr. Larry Miller to identify the defendant’s letters to Ricky Miller. Because of Dr. Miller’s availability when the Varnadore letters appeared, the defendant was not prejudiced by any earlier revelation by the court.”

COMMENTARY: Dr. Miller, a member of NADE, heads the forensic department at East Tennessee State University where they offer a graduate certificate in document examination.

## 2000

795. *Coe v State*, 17 S.W.3d 193, 2000 Tenn. LEXIS 116 (TN 2000); motion denied, 17 S.W.3d 249, 2000 Tenn. LEXIS 149 (TN 2000); certiorari denied, *Bell v. Coe*, 529 U.S. 1034, 120 S. Ct. 1460, 146 L. Ed. 2d 344, 2000 U.S. LEXIS 2200 (2000)

Defendant appealed in part on the basis that in his competency hearing he was not granted a continuance to find a handwriting expert. The court granted funds to do so, but counsel for defendant waited until the hearing to ask for a continuance when it was known that the state would call its expert. However, the court stated it did not consider the handwriting expert's testimony in making its decision regarding defendant's competence to stand trial.

COMMENTARY: A case of routine, and useless, presentation of handwriting expert testimony. One cannot fault the prosecutor, since at trial one has to have all bases covered or risk losing on the smallest of points. For want of a nail the horse, rider, troop, cavalry, army, battle, war and kingdom were all lost. At times a handwriting expert is only a horse shoe nail, but often at times nail in the opposing party's coffin. We should scoff at no nail, for it might nail us.

## 2001

796. *Brown, et al. v Birman Managed Care, Inc., et al.*, 42 S.W.3d 62, 2001 Tenn. LEXIS 358 (TN 2001)

"Apart from the affidavits and depositions, Brown also relies on allegedly forged documents she claims were used to cover up the Secretary Scheme fraud.... Brown's attorney hired Jane Eakes, a certified forensic examiner, to examine the signatures. Ms. Eakes's opinion is that Ryan Masters signed Kathy's name on both documents."

COMMENTARY: A case of routine admissibility. Ms. Eakes is in NADE.

797. *Rothstein v Orange Grove Ctr.*, 2000 Tenn. App. LEXIS 332 (TN Ct. App. 2000); remanded on issue of filial consortium, 60 S.W.3d 807, 2001 Tenn. LEXIS 808 (TN 2001)

"Mr. Storer was established to be an expert in the area of handwriting. His testimony could have substantially assisted the jury in determining what caused the apparent differences in the questioned medical record entries. The testimony was evidence that the questioned entries were made at another time than the entries directly preceding them in the record dated November 22. From that evidence the jury could have permissibly inferred that the entries were made after Lisa's death to conceal a breach of the standard of care. See *Snyder*, 825 S.W.2d at 415.

"Mr. Storer's testimony may have brought into question when Dr. Prater made these entries. This testimony, however, is not impermissibly related to Dr. Prater's credibility. Rule 702 does not require that an expert be neutral. See Neil P. Cohen, Donald F. Paine, & Sarah Y. Sheppard, *Tennessee Law of Evidence*, §§ 7.02[3], 7-20 (2000). An expert's purpose is to provide an opinion about a disputed issue. The opinion will often vary from the opinion of other experts and may contradict factual testimony from other witnesses. See, e.g., *Edwards v. State*, 540 S.W.2d 641 (Tenn. 1976). [\*12] Mr. Storer was not commenting upon Dr. Prater's truthfulness. Mr. Storer was testifying only as to his observation of the medical record and as to his expert conclusions based upon those observations. His testimony did not evaluate or comment upon Dr.



Prater's credibility. See *Herbert v. Brazeale*, 902 S.W.2d 933, 937 (Tenn. Ct. App. 1995). The trial court, therefore, did not err in admitting Mr. Storer's testimony."

COMMENTARY: There is more discussion of Storer's testimony, which is worth the reading, particularly for experts in Tennessee. It sets forth the fine points of what forensic experts may or may not address in testimony. I suspect there is hardly a one of us who did not innocently say something that affected our testimony negatively because of some fine point of law. When it is said the expert is not required to be neutral, the Tennessee Supreme Court is not speaking about being an advocate or hireling for a party but being committed to presenting independent opinions objectively and steadfastly.

## 2011

798. *Regions Bank v Bric Constructors, LLC, et al.*, No. M2010-01898-COA-R3-CV. (Court of Appeals of Tennessee, at Nashville. May 3, 2011 Session. Filed December 13, 2011)

The court of appeals quoted and accepted this opinion of the trial court: "[T]he testimony of Bric McIntosh, Patricia McIntosh's husband, that he did not sign the ten (10) questioned documents, is not credible. Instead, the Court credits the testimony of Regions Bank's forensic handwriting witness, Jane Eakes, who testified that, based on her analysis of Mr. McIntosh's subconscious handwriting habits, that in her opinion, Mr. McIntosh signed his wife's signature to eight (8) of the ten (10) questioned documents. The Court credits this testimony and finds it persuasive with regard to the issue of who signed at least eight (8) of the ten (10) questioned documents."

COMMENTARY: Ms. Eakes is a certified member of NADE.

### *3. Tennessee Court of Criminal Appeals.*

## 1996

799. *Harris v State*, 947 SW 2d 156 (TN Ct. Crim. App. 1996); petition for habeas corpus, *Harris v Bell*, No. 3:97-cv-407. (US Dist. Ct. ED TN 2007)

In an appeal after denial of post conviction relief, a major issue was whether defendant had not received effective defense from his trial lawyer. The discussion is a bit complicated and involves the following two document examiners.

The State's document examiner, Thomas Vastrick, excluded three possible writers but only established "strong indications" that Harris had written a letter in question. Harris' former girlfriend identified the handwriting as his.

Previously defense counsel had contacted James Kelly, a handwriting expert with the Georgia Bureau of Investigation. His conclusion as to Harris having written the letter was as inconclusive as Vastrick's. Defense counsel was wary of consulting another expert lest he develop evidence helpful to the prosecution.

COMMENTARY: A case of routine admissibility regarding Vastrick, and a case of routine balancing of risk versus benefit for defense counsel's decisions in the midst of trial.

800. *State v Bailey*, Court of Criminal Appeals, Tennessee, C.C.A. # 03C01-9501-CR-00004, January 11, 1996

Conviction for forgery was upheld.

Tennessee Rule of Evidence 702 seems to read the same as the Federal Rule 702. Defense counsel is quoted: "Your Honor, he [investigator Lawrence Smith] has specialized training in identification of similarities in handwriting, and, although he will not qualify as a handwriting expert, he will be of assistance to the jury in telling the jury what it is you look for in comparison of handwritings and in that regard he has done some investigation...." The Trial Court disagreed and did not let him testify, which was held upon appeal not to be error. Neither the State nor defendant called a handwriting expert.

COMMENTARY: This case is included lest someone one day misrepresent it as ruling a handwriting expert was inadmissible. Defense counsel seemed to want a witness admitted to provide expert assistance in handwriting to the jury while she acknowledged that the witness was not qualified as an expert in handwriting. However, Saks and his kind are definitely not expert in handwriting, but they qualify precisely as non-experts. Defense counsel for Bailey thus might have done better in those Federal Courts which unwittingly follow the rule that the better expert is the lesser expert who surpasses in presumptuousness.

## 2001

801. *State v Livingston*, judgment of the criminal court affirmed, 2001 Tenn. Crim. App. LEXIS 573 (Tenn. Crim. App. 2001); dismissal of the petition for post-conviction relief affirmed, *Livingston v State*, 2005 Tenn. Crim. App. LEXIS 736 (Tenn. Crim App. 2005)

Defendant used photocopied prescriptions with the refill line filled in to obtain controlled substances.

"Evidently Tommy Reagan, a forensic handwriting expert, was retained by the petitioner, and from Mr. Reagan's analysis and comparison of handwriting samples, he had concluded that it was 'highly probable that [the prescriptions] were not signed by [the petitioner].' The defense called Mr. Reagan as a witness at trial and was able to elicit his opinion that 'the questioned documents were not signed by [the petitioner]. [\*5]' Immediately thereafter, the state objected that the petitioner had failed to provide the state with reciprocal discovery regarding Mr. Reagan, and the trial court refused to allow any further questioning by the defense."

COMMENTARY: Whether or not he had signed the false prescription forms, he had still passed them. He could have easily had a friend sign them with the doctor's name as he had his girl friend copy the forms he had used.

Around 1950 at Point Loma High School in San Diego, a friend of my brother's had the same girl sign his mother's name to notes excusing him from missing school when he played hooky. One day he was honestly absent and used the genuine note his mother gave him. The school nurse thought that one was a forgery, until she interviewed the mother who stated it was the only one she had signed. Like all forgers, his smugness of having gotten away with it led to the mistake that caught him in the net of his own deceptions.

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802. *State v Turner*, 2001 Tenn. Crim. App. LEXIS 419 (TN Crim. App. 2001)

Robert Muehlberger testified that writing on the murder victim's stomach was by defendant. The defendant claimed it was error to permit this testimony since it was not disclosed before trial. He contended three things were wrong with the opinion itself:

- the victim was lying down, not standing, when the words were written,
- nor was the victim moving, and
- the writing was not smeared as if she had later worn clothes or touched someone.

Muehlberger's reports had only stated that the handwriting on the victim's body was defendant's. It was not alleged that the omissions were intentional or that the expert was deliberately misleading in the defense's pretrial interview of him. Further, the trial court permitted a delay of six days before Muehlberger was cross-examined. All this showed defendant was not prejudiced by the expert testimony.

COMMENTARY: It would enrich the literature of document examination to have cases like this written up with explanation how the work satisfied all requirements for scientific validity and technical reliability.

## 2003

803. *State v Anthony*, 2003 Tenn. Crim. App. LEXIS 1108 (TN Crim App. 2003); appeal denied, 2004 Tenn. LEXIS 523 (TN 2004); post-conviction relief denied, *Anthony v. State*, 2008 Tenn. Crim. App. LEXIS 226 (TN Crim. App. 24, 2008)

"Thomas Vastrick, a forensic document examiner, compared Defendant's handwriting samples with the handwriting on the Powertel service agreement and one of the checks. Mr. Vastrick testified that the writer of the samples also filled out the other documents. [\*11]"

COMMENTARY: A case of routine admissibility.

804. *State v Looper*, 118 SW 3d 386 (TN Ct. Crim. App. 2003)

At page 394: "Robert J. Muehlberger, the manager of the forensic laboratory of the United States Postal Inspection Service and a forensic document examiner, testified that he had examined the signature 'Anthony Looper' on the original Gerhard Auto House form and on a quitclaim deed and two campaign financial disclosure statements bearing the signature 'Byron A. Looper,' as well as an appointment of political treasurer form also bearing the signature 'Byron A. .' He testified that, in his opinion, the same person had signed each of these documents."

Conviction for murder and sentence for life without parole were affirmed.

COMMENTARY: A case of routine admissibility.

805. *State v White*, 2003 Tenn. Crim. App. LEXIS 468 (TN Crim. App. 2003); appeal denied, 2003 Tenn. LEXIS 1086 (Tenn., Oct. 27, 2003); subsequent appeal, remanded, 2004 Tenn. Crim. App. LEXIS 958 (TN Crim. App. 2004)

"Tom Vastrick, a handwriting expert, testified that he examined handwriting on the envelope that contained the metal [\*25] shavings. He said that he compared the handwriting with the defendant's handwriting samples and that the handwriting on the envelope matched the defendant. On cross-examination, he said that he also analyzed a signature on an American

National Insurance Company life insurance policy and that the signature matched the victim.”

COMMENTARY: In what seems a rather toxic decision, it was not error for the trial court to rule that defendant’s expert toxicologist could not testify to the toxicity of heavy metals in the blood, since he was not a medical doctor.

## 2006

806. *State v. Bryan*, 2003 Tenn. Crim. App. LEXIS 1088 (TN Cr. App. 2003); affirmed, *Bryan v State*, 2006 Tenn. Crim. App. LEXIS 592 (TN Cr. App. 2006); appeal denied, 2006 Tenn. LEXIS 1109 (TN 2006)

### 2006 Tenn. Crim App. LEXIS 592:

“Rosa Bryan [wife of Defendant’s brother Danny] discovered the notebook in December while she and her husband were staying in Defendant’s house after his arrest and gave it to Officer Thomas. At trial, Grant Sperry was qualified as an expert in forensic document examination. Based on the decipherable impressions and indented writings found in the notebook, Mr. Sperry was able to make out some of the words on a drawing that appeared to be a map including, among others, ‘Sam Ridley,’ ‘school,’ ‘shovel and rake,’ and ‘where dozer has cleared.’ Mr. Sperry compared the features and characteristics of the indented writings on the notebook’s remaining pages with known samples of Defendant’s handwriting. Based on this comparison, Mr. Sperry testified that the indented [\*9] writings in the notebook had been made by Defendant.”

COMMENTARY: Indented writing is made by original writing executed on one sheet of paper placed on top of another. If the pressure of the writing is sufficient, indentations are made into even four or more sheets of paper beneath the one being written on. Mr. Sperry would have had to demonstrate competence beyond merely being able to identify original handwriting, so this case is especially supportive of the objective ability of a qualified handwriting expert to give reliable testimony.

807. *State v Davis*, conviction affirmed on direct appeal, 1997 Tenn. Crim. App. LEXIS 868, 1997 WL 576483 (Tenn. Crim. App. 1997); decision of post-conviction court affirmed, *Davis v State*, 2006 Tenn. Crim. App. LEXIS 65 (TN Crim. App. 2006); appeal denied, 2006 Tenn. LEXIS 500 (TN 2006)

### 2006 Tenn. Crim. App. LEXIS 65:

At [\*3]: “Jenkins also testified on behalf of the defense. He claimed that defendant was not involved in the incident and insisted the shooting was carried out by Crutcher, himself and a man named ‘Butter.’

“On rebuttal, the state presented a letter written to Crutcher. In the letter, the writer asks Crutcher to assist, along with ‘Teddy Bear,’ in a plan to blame the shooting on a man named ‘Butter.’ A handwriting expert testified that the writing in the letter was consistent with that of the defendant’s.”

Defendant was convicted of first degree murder with a life sentence.

COMMENTARY: A case of routine admissibility.

808. *Looper v State*, No. E2005-01918-CCA-R3-PC. (TN Ct. Crim. App. 2008)

“Robert J. Muehlberger, the manager of the forensic laboratory of the United States Postal Inspection Service and a forensic document examiner, testified that he had examined the signature ‘Anthony Looper’ on the original Gerhard Auto House form and on a quitclaim deed and two campaign financial disclosure statements bearing the signature ‘Byron A. Looper,’ as well as an appointment of political treasurer form also bearing the signature ‘Byron A. Looper.’ He testified that, in his opinion, the same person had signed each of these documents.”

COMMENTARY: See previous 2003 case, Item 804 above, that might be a related prosecution or an earlier development in the same case.

809. *State v Flannel*, 2008 Tenn. Crim. App. LEXIS 821

One argument on appeal was that the Trial Court erred in admitting Bartlett Police Captain David Cupp as an expert witness in handwriting. Cupp was properly qualified on the basis of his training and experience. “He testified that for the last eight years, he had conducted handwriting analysis for the Federal Bureau of Investigation (FBI), and the Secret Service, several law enforcement agencies in Tennessee, and several banks and lending institutions. Cupp also testified that he was a member of two professional associations: The National Association of Document Examiners and The National Association of Fraud Specialists. Cupp noted that these associations required twenty hours of credited courses and ongoing practice. Cupp acknowledged that he was unable [\*39] to become certified by the American Board of Forensic Document Examiners because he lacked a college degree.”

COMMENTARY: Captain Cupp must have been confused on his background, since as of 2008 he was not a member of NADE, and available records indicate he had never been. In a later 2009 case discussed below, Item 813, Cupp seemed to have dropped a claim to NADE membership.

810. *State v. Stinnett*; judgment of the circuit court affirmed., 1998 Tenn. Crim. App. LEXIS 1025 (TN Crim. App. 1998); trial court’s denial of petition for writ of error coram nobis affirmed, *Stinnett v State*, 2008 Tenn. Crim. App. LEXIS 736 (TN Crim. App. 2008)

Handwriting expert, Bob Muehlberger, testified at trial that defendant wrote three documents in question.

COMMENTARY: A case of routine admissibility.

811. *Ziyad v Estate of William B. Tanner, Sr.*, No. W2007-01683-COA-R3-CV, Court of Appeals of Tennessee, at Jackson (August 21, 2008)

Steven Slyter testified that a copied document could have a transferred signature and that the signature was characteristic of those by decedent prior in date to the document.

COMMENTARY: The document was found to be false. A handwriting trait that is purportedly seen in a writing of one time period but was only characteristic of another time period is called an anachronism. In imitated signatures of ill or older persons, this often occurs since the forger may only have older signatures to use as models.

812. *State v Brown*, 2009 Tenn. Crim. App. LEXIS 301 (Tenn. Ct. Crim. App. 2009)

“Thomas Vastrick, a forensic document examiner, testified that he took handwriting [\*28] samples from the defendant, which involved the defendant writing the same words and phrases three times. Vastrick then compared the defendant’s handwriting samples to both the handwriting on the note obtained from Bryant and the handwriting on the ‘new personality profile’ found in the defendant’s motel room. Vastrick testified that he ‘was able to determine that the questioned writings’ in both the note from the jail cell and the new personality profile were written by the defendant. On cross-examination, Vastrick said that the defendant appeared to be writing ‘naturally’ while giving her handwriting samples and did not appear to ‘fake her handwriting’ while giving the samples.”

The “new personality profile” was relevant because it tended to prove premeditation and plan to escape prosecution for the murder. The compelled handwriting samples did not violate any constitutional privilege.

COMMENTARY: One would wish that the case report would have explained why the writing of the same words and phrases three times. Usually it is to vary speed or obtain opposite hand samples or various disguises such as use of a different slant.

813. *State v Williams*, 2009 Tenn. Crim. App. LEXIS 768 (TN Crim. App. 2009)

“Captain David Cupp with the Bartlett Police Department was accepted by the court as an expert in handwriting analysis. Captain Cupp compared the enclosure letter sent to Sergeant Currin with six to eight documents written by the defendant and was ‘one hundred percent sure’ the enclosure letter was written [\*16] by the defendant. Captain Cupp said that when doing a comparison, he looked for eleven indications with each letter in each word. In examining the known writings of the defendant, Captain Cupp made a list of fourteen things unique about the defendant’s handwriting and then noted those traits in the questioned document.”

There is extensive discussion regarding Cupp’s admissibility, beginning at [\*21] with the defense’s contentions: “The defendant argues that the trial court erred in allowing Captain David Cupp to testify as a handwriting expert. He asserts that Captain Cupp’s testimony did not meet the criteria set out in *McDaniel v. CSX Transportation, Inc.*, 955 S.W.2d 257 (Tenn. 1997), to qualify as an expert because he was not familiar with the history of handwriting analysis, not familiar with any scientific studies, his work was not subject to peer review, he did not know the potential rate of error of handwriting analysis, there was no testimony that handwriting analysis was generally accepted in the scientific community, and his research was done for the purpose of litigation.”

Later the criteria given in *McDaniel* are listed as something the trial court “may” employ. They are the *Daubert* criteria.

Cupp testified to his membership in professional associations, this time omitting National Association of Document Examiners. See Item 809 above, *State v Flannel*, 2008 Tenn. Crim. App. LEXIS 821. For this case, “[H]e belonged to the Association of Certified Fraud Specialists and the National Association of Fraud Examiners. Captain Cupp explained that he had to be re-certified every year through the organizations, which involved sending in his hours and number

of cases worked.”

COMMENTARY: Cupp’s methodology and terminology appear to be unique versus being what is standard in the field of document examination. His training was the Secret Service two-week course and some work with another document examiner for a year. His certifications hardly seem challenging or much related to his “expertise.” This case should give heart to the lesser lights in our profession and sorrow to the rest of us.

## 2010

814. *State v Schlieff*, No. E2008-02147-CCA-R3-CD. (TN Ct. Crim. App. 2010)

This appeal affirmed conviction for rape of a child.

“The State rested, and the defense called Roy Cooper, a forensic document examiner, who testified on behalf of the defendant that he could say with 90 percent certainty that H.R. had written the document that said the defendant did not rape her. During cross-examination, Mr. Cooper acknowledged that he had no personal knowledge whether the ‘known’ writing samples provided to him by the defense were actually written by H.R.”

COMMENTARY: Naturally Cooper would have no personal knowledge of the exemplars. If he had, he would have been a percipient witness, while the client and client’s attorney have the obligation to prove the authenticity of the exemplars to the satisfaction of the judge. I have several times strongly asserted these points when asked such a misleading and falsely suggestive question.

## 2012

815. *State v Cooper*, No. E2011-00590-CCA-R3-CD. (TN Ct. Crim. App. 2012)

“The defense utilized the testimony of handwriting expert Dr. Larry Miller from East Tennessee State University. He reviewed all of the checks that were cashed and opined that Mr. Taylor had signed all of the checks. Dr. Miller noted that some of the checks had been altered or changed after they were initially written. Dr. Miller testified that the changes on some of the checks were consistent with Mr. Taylor’s handwriting.”

COMMENTARY: Dr. Miller is a certified member of NADE and has served as Education Chair. He heads the forensic department at ETSU which offers a graduate certificate in document examination. I believe he is also certified by BFDE.

### *3. Tennessee Supreme Court.*

## 2010

816. *Richardson v James Brown Contracting, Inc.*, No. E2009-01785-WC-R9-WC. (TN 2010)

“Roy Cooper, Jr., a forensic document examiner, testified as an expert on behalf of JBT. Cooper stated with eighty-five percent certainty that the signatures on the addenda were not Richardson’s. Cooper also compared the signature on the addenda to the writing sample of Teresa Richardson and opined that he was eighty-five to ninety-five percent certain that she was

the signer. Cooper explained that he could not assess the signatures on the addenda with one-hundred percent accuracy because the original copies of the documents were not available.”

The addenda were added to the original employment contracts for truck owner/operators to remove them from coverage by worker compensation. Richardson had elected the coverage under condition he pay for it, and the court said that prevailed. His wife had no authority to sign for him, so it was inconsequential whether or not her signatures on the addenda were genuine.

COMMENTARY: This is another case where a party’s own expert’s testimony helped establish the case for the opposing party. The use of percentages to express opinions in handwriting comparative examinations is a very big no-no, since if challenged the expert most likely will not be able to support it with mathematical data statistically analyzed. It is time that we be required to move into that area of evaluating our evidence, of however limited value it might prove to be. We would need to avoid the fallacy that there are no reliable truths other than mathematical truths. There is no mathematically reliable evidence that only mathematical evidence is reliable. Likewise, there is no mathematical proof that only mathematical proof is probative. I dare anyone to follow the most mathematical of mathematicians around all day and ask of every assertion made what is the mathematical proof of it. If you are tempted to do so, do have your life insurance paid up.

## QQ. TEXAS CASES.

### *1. Texas Trial Courts.*

#### 2010

817. *State v Caceres*, Cause No. CR-0002-10-D. (Texas District Court of Hidalgo County 2010)

Prosecutor moved to exclude defense document examiner, Kay Micklitz, because she did not have the laboratory accreditation required under Texas Code of Criminal Procedure Art. 38.35. Court ruled the provision unconstitutional since it denied defendant access to an examiner, there being only two law enforcement labs covering document examination in Texas with the accreditation. In a subsequent hearing, the judge said the provision might also intrude upon the court’s gatekeeper role since it predetermined an expert’s admissibility, but that had not yet been argued by a defense attorney.

COMMENTARY: Ms. Micklitz is a diplomate member of NADE. A brief survey of Texas cases involving Art. 38.35 involved defense objection to prosecutorial experts from labs without the accreditation. Universally there was always some reason why the prosecutor need not conform to the rule.

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## 2. Texas Courts of Appeal.

### 1993

#### 818. *Stokes v State*, 853 SW2 227 (Ct Ap TX Tyler 1993)

At page 239: “Dale Stobaugh, a forensic document examiner for the D.P.S. crime lab at Austin, Texas, compared several writings seized from the crime scenes with known handwriting samples taken from each defendant.” He was able to “definitely establish” one exhibit was written by one defendant. No challenge to admissibility is reported.

COMMENTARY: This is offered as a case supporting admissibility from a state following the same rules as Federal courts. One could reasonably argue that lack of a challenge means the opposing side saw no viable challenge. The fact of modern admissibility certainly supports, rather than takes away from, reliability.

### 1994

#### 819. *Lyon v State*, 885 SW 2d 506 (TX Ct. App. 8 Dist. 1994)

At page 514: “Marvin Morgan testified he was a questioned document examiner from the Bexar County Forensic Science Center in San Antonio. He utilized known examples of the victim’s handwriting in examining thirty-seven questioned documents.” He found them all to have been written by the victim, though he did not examine defendant’s handwriting.

At page 515: “On rebuttal, the State utilized the testimony of Hartford R. Kittel, a document examiner. He examined a collection of writings attributed to Nancy Lyon, which he compared to some of her known writings. He also compared the purported writings to Appellant’s known writings. The witness examined the writing that indicated ‘fear of Bill.’ He stated that most of the writing was the victim’s but that some of the writing belonged to Appellant.” The latter seemed to be all descriptions of sexual abuse by Bill, her brother and her sister.

After conviction, defense claimed newly discovered evidence that comprised more documents. “The trial attorney sent these documents to Marvin Morgan and to Steven Cain, another handwriting expert. Al Leightner, an ink examiner, was also consulted. Both experts testified that given this 518\*518 additional material, they could refute Kittel’s conclusions.” However, since the documents were in possession of defense prior to trial, there was no due diligence and thus no newly discovered evidence.

COMMENTARY: “Al Leightner” may be a mistype for “Al Lyter.”

I realize there must be firm rules concerning newly discovered evidence to support motions for reconsideration and appeals. However, where there is a reasonable probability, as in *Lyon v State*, that an innocent defendant has been convicted, I assert that we must create a special exception and require a proper investigation. Technicalities are to serve humans, not tyrannize them.

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1998

820. *Vasquez v State*, 975 SW2 415 (Ct Ap TX Austin 1998)

Conviction for sexual assault on child was affirmed. Expert testimony on witness' truthfulness and on statement analysis were admissible only on rebuttal of contrary attacks by defense. Linguistics or stylistics is here called "statement validity assessment" or "analysis." At page 418: "Specific testimony that statement validity analysis indicates that the person's statement is in fact an account of real events is usually inadmissible, and may be adduced only to rebut specific testimony that such analysis indicates that the statement is not an account of real events." Also at page 418: "He [the expert] also noted that the complainant 'tells about something that didn't happen,' which is another characteristic of statements that are not fabricated."

COMMENTARY: First a puzzlement regarding the last item: So a fabricated story only tells of what did in fact happen? Or to ask it in another way: A statement that is not fabricated contains fabrications? This kind of amazing insight seems typical of this kind of expertise which is a perversion of standard linguistics rather than a valid branch of it.. This case ought never be used against handwriting identification though it has been, since the latter never purports to offer independent proof of the truthfulness of statements. The most famous course text on this dubious skill contains within the chapter on determining truth in statements every single trait that the author asserts is a sign of a false statement.

1999

821. *Brown v State*, 1999 Tex. App. LEXIS 805 (Ap Dallas TX 1999)

One paragraph is devoted to consideration of defense expert witness. At [\*22-23]: "In his twelfth point of error, Brown contends that the trial court erred in overruling his objection to the prosecutor's argument during the guilt or innocence phase of the trial in which he called defense witness Curtis Baggett a 'charlatan.' Baggett testified that he was a psychologist, hypnotherapist, psychotherapist, and graphologist, and that he had been designated by the court as an expert witness in this case. The court noted that Baggett had not been properly qualified as an expert, and Baggett retracted his testimony that the court had designated him as an expert in this case. Baggett testified that he is not licensed as a psychologist or a psychotherapist and has not practiced therapy full-time for fifteen years, although he still conducts occasional weight loss and stress management seminars. Baggett works primarily in real estate and financial planning. A 'charlatan' is defined as 'a pretender to medical knowledge: a quack.' Webster's Third New International Dictionary 378 (1993). We conclude that the prosecutor's argument that Baggett was a charlatan was proper as a reasonable deduction from the evidence. See *Broussard v. State*, 910 S. W.2d 952, 959 (Tex. Crim. Ann. 1995), *cert. denied*, 519 U.S. 826, 117 S. Ct. 87, 136 L. Ed. 2d 44 (1996)."

COMMENTARY: This writer would offer no defense of Mr. Baggett. Presumably the Trial Court permitted him to testify. Although he was called for his purported expertise in psychology, the case is included since he appears so ubiquitously for his purported expertise in document examination.

822. *Diggs v State*, 1999 Tex. App. LEXIS 3380 (Ap Austin TX 1999)

Conviction for passing bad check is affirmed. Lillian Hutchinson as defendant's handwriting expert testified he had not written the check, while Randy Rubio as the prosecution expert said he had. The Trial Court could have believed Rubio over Hutchinson.

COMMENTARY: Online report from "SUN 08/23/1992 HOUSTON CHRONICLE, Section Lifestyle, Page 2, 2 STAR Edition" stated that Hutchinson taught at 1992 International Congress and Resident Institute of Graphoanalysis in Chicago. An alternative spelling seems to be Hutchison.

823. *Duggan v Marshall, et al.*, 7 S.W.3d 888, 1999 Tex. App. LEXIS 9465 (Ap Houston TX 1999)

Duggan claimed she had received a Tax Resale Certificate from Marshall Petroleum, but her handwriting expert testified that the signature was not Marshall's. Other evidence supported that opinion.

COMMENTARY: A case of routine admissibility, but one that reminds the attorney to be sure of the opinion one's expert has arrived at.

824. *Gaynier v Ginsberg, et al.*, 1999 Tex. App. LEXIS 2376 (Ap Dallas TX 1999)

In a case originally filed in November 1981, summary judgment for defendants is affirmed. At trial several handwriting experts testified for Gaynier that her deceased husband's signature on a deed in dispute was not authentic. No other information is given regarding expert handwriting evidence.

COMMENTARY: A case of routine admissibility.

825. *Gulley v State*, 1999 Tex. App. LEXIS 8205 (TX Ct Ap 1999)

It was not abuse of discretion to disallow testimony of defense's proffered handwriting expert. "Although it could be conceded from the record that the underlying science of handwriting analysis was a valid science, the remaining six factors illuminated in *Kelly* were conspicuously absent."

COMMENTARY: Once an expert has been notified there might well be trial testimony, the expert should systematically review all factors on admissibility to be sure each is covered or, if not applicable in the particular situation, prepare a clear explanation that it is not applicable and what alternative reasonable factor would be applicable. Experts should obtain copies of statutes, rules and court cases that control the kind of testimony they will be likely to give in particular jurisdictions. In any case, one ought to inquire of the attorney calling one as an expert what requirements precisely must be satisfied and how. From personal knowledge I know that in this case the witness had prepared questions to bring out a full explication of the reliability in accordance with Texas *Kelly* and *du Pont* cases, but the defense attorney asked for none of it.

The citation for the *du Pont* case is *E.I. du Pont de Nemours & Co., Inc., v Robinson*, 923 S.W.2d 549 (Sup Ct Tex. 1995). That for the *Kelley* case is *Kelly v State*, 792 S.W.2d 579 (Ct App. Tex. Fort Worth 1990); affirmed, 824 S.W.2d 568 (Ct Cr App. Tex. 1992). I believe the *Kelly* case sets forth far more clearly and cleanly what the U.S. Supreme Court struggled so clumsily to accomplish in its *Daubert* decision. The outstanding virtue of *Daubert* over *Kelly* is

the former's verbosity. As usual, wordiness revealed, rather than dispelled, the writers' own perplexity, a perplexity that became law by precedence. Thus came the expenditure of time, talent and treasure on trying to sort it out. Would that the Federal Supreme Court had had the intelligence and modesty simply to adopt the *Kelly* decision from the Texas Court of Criminal Appeals.

826. *In re the Estate of Orville Peter Livingston; Livingston v Nacim*, 999 SW2 874, 1999 Tex. App. LEXIS 6718 (Ap El Paso TX 1999)

Livingston brought action to probate an earlier will while his sister, Nacim, sought to have a later will probated. She prevailed and he appealed. The Trial Court ordered both parties to deposit \$1500 so that the Court could select a qualified document examiner to report on decedent's signature on the later will. Nacim alleged that Livingston had not deposited his \$1500 but had consulted Al Keon, a handwriting expert, who determined the signature in question was authentic. Remarks by Livingston's counsel to the Court about consulting Keon and the lack of objection to the Court's considering Keon's deposition and report in effect waived any error in the issue.

COMMENTARY: Though apparently Keon did not testify before the Trial Court, his deposition testimony and report were relied on by the Court without objection by either party. For that reason I include this case citation as supportive of admissibility of expert handwriting evidence in courts of law. The correct spelling of the expert's name is "Keown." I believe him to be a member of AFDE.

## 2000

827. *Ates v State*, 21 S.W.3d 384, 2000 Tex. App. LEXIS 866 (Ap Tyler TX 2000)

"Denise Jarrett, a handwriting expert, testified that in her opinion State's Exhibit 130 was written by Appellant." Conviction for murder was affirmed.

COMMENTARY: This is a case of routine admissibility.

828. *Bellah v State*, 2000 Tex. App. LEXIS 2876 (Ap Dallas TX 2000)

Handwriting expert Crawford testified without objection and his reports were admitted without objection, and so admission of the evidence was harmless.

COMMENTARY: A case of routine admissibility.

829. *Dial v State*, 2000 Tex. App. LEXIS 872 (Ap Dallas TX 2000)

"Appellant contends that trial counsel should have had his own handwriting and footprint experts. Appellant fails to explain why such experts were necessary. The State never contended that the handwriting excerpts were appellant's. The purpose of the State's handwriting expert was to show that the signatures on the insurance forms were not Sandy's handwriting. Likewise, the State did not contend that the footprints were appellant's. Thus, we conclude that the failure to call these experts does not amount to deficient performance."

COMMENTARY: A case of routine admissibility.

830. *Green v State*, 2000 Tex App LEXIS 8690, 55 S.W.3d 633 (Ct Ap Tyler TX 2001); withdrawn and opinion substituted, 2001 Tex App LEXIS 1112

The discussion will consider the opinion as given in 55 S.W.3d 633, which affirms conviction and life imprisonment for capital murder.

“False confession expertise” was properly excluded. At page 638: “[T]he trial court ruled the evidence inadmissible because (1) there was no case law recognizing such expert testimony, (2) Allen had never testified in this area before, (3) there was ‘no dedicated certification process for this confession process,’ and (4) there were ‘no periodicals dedicated to the process.’ The trial court further found Allen’s opinion to be subjective and ‘not readily re-produceable [sic].’ The trial court held that the issue was one of credibility couched in psychiatric or pseudo-psychiatric terms.”

At page 641 the Court evaluates the published authorities the expert provided: “The documents appear to be photocopies of pages of some textbook or treatise, but no author, title of publication, or date of publication is provided in the record. Furthermore, there was no indication that Allen had relied upon or utilized the research or techniques described....”

COMMENTARY: The four points given are all satisfied by forensic handwriting comparison which at times is tied into such questionable expertise as “false confession expertise.” This practice must also be distinguished from legitimate linguistics to which none of the criticisms in *Green* apply.

831. *Lopez v Sepulveda*, 2000 Tex. App. LEXIS 6362 (Ap Dallas TX 2000)

Appellant Lopez, in an election contest, presented expert handwriting evidence. All issues were decided against him.

COMMENTARY: A case of routine admissibility.

832. *Martinez v State*, 2000 TX App. LEXIS 6542 (Ap Houston TX 2000)

Alleged child victims of molestation purportedly wrote letters saying the accusations were lies. “Both the State and the defense put on evidence from handwriting experts.” The appeal claimed it was error when the judge refused to admit a chart by the defense expert, Ms. Shipper, because it had notations made by her and not the alleged victims. This complaint had not been preserved for appeal.

COMMENTARY: A case of routine admissibility.

833. *Morales v State*, 11 S.W.3d 460, 2000 Tex. App. LEXIS 1132 (Ap El Paso TX 2000)

Defendant’s conviction for forgery and tampering with a government record was affirmed. Allan Keown, a handwriting expert, identified Morales’ campaign manager as one who wrote several names on a petition for candidacy for Constable. Numerous voters testified that they had not signed the petition nor given anyone permission to sign for them.

COMMENTARY: A case of routine admissibility.

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834. *Parmer v State*, 38 S.W.3d 661, 2000 Tex. App. LEXIS 8013 (Ap Austin TX 2000)

Complainant in a prosecution for aggravated sexual assault found a threatening note in her car. At trial a handwriting expert testified that defendant had written the note.

COMMENTARY: A case of routine admissibility.

835. *Rosemon v State*, 2000 Tex. App. LEXIS 414 (Ap Houston TX 2000)

Conviction of “state jail felony offense of forgery” is affirmed. Appellant claimed the prosecutor failed to disclose exculpatory evidence by not revealing the results of a handwriting comparison after she had given requested exemplars. The prosecutor said he had orally informed defense counsel the results were “inconclusive, not exculpatory.” Defense called Milton Ojeman, document examiner with Harris County D.A., who testified that, when comparing a known to questioned writing: “Those results are positive identification, highly probable, probable, inconclusive, and positive elimination. When comparing appellant’s exemplars to the alleged forgery, Ojeman’s comparison was inconclusive.” Appellant’s claim that the late disclosure prevented her from obtaining her own independent handwriting examiner was not supported by the appellate record.

COMMENTARY: This can be considered another case of routine admissibility with the added virtue that the Court received testimony about the multiple step level of probability terminology in handwriting opinions, here reduced to five with “indications are” left out.

836. *Stringfellow v State*, 2000 Tex. App. LEXIS 2613 (Ap Dallas TX 2000)

A store owner, her employee and son identified appellant/defendant in a photo lineup and at trial as one who came in with defendant’s daughter, shopped and passed a bad check, using ID with name of person from whom checks had been stolen. The son wrote the car license down and gave it to police, and the employee had called the woman whose name was on the check and then called police. At trial, defendant’s handwriting expert, Gene Hollis, testified that defendant had not written the check in question. It was for the fact-finder to resolve conflicting evidence.

COMMENTARY: A case of routine admissibility.

837. *Villanueva v State*, 2000 Tex. App. LEXIS 6213 (Ap Austin TX 2000)

At [\*6]: “A handwriting expert compared the endorsement signature on check number 2175 with appellant’s known signature. The expert testified that in his opinion appellant had endorsed the check.”

COMMENTARY: A case of routine admissibility.

## 2001

838. *Johnson v State*, 2001 Tex. App. LEXIS 3554 (Ap Houston TX 2001)

At [\*2-3]: “State’s handwriting expert, Dale Stoval, as well as Ms. Mack [defendant’s girl friend], identified the writing on the temporary license plate as appellant’s. Mr. Stoval had over twenty-five years experience in handwriting comparison. He made his handwriting identification by comparing a sample of appellant’s writing, from inmate medical records, with handwriting on the paper license tag recovered from the Mustang.” It was not ineffective assistance of counsel,

but trial tactics, that defense counsel did not call a handwriting expert to prove defendant did not write on the paper license tag and rebut State's expert witness.

COMMENTARY: That the appeal asserted trial counsel ought to have retained and called a handwriting expert, as the State did, indicates that reliability of the expertise was unquestioned by both sides. "Dale Stoval" may be a misspelling for "Dale Stobaugh."

839. *Levy v Hunt, et al.*, 2001 Tex. App. LEXIS 2066 (Ap Houston TX 2001)

A handwriting expert testified that decedent's signature on a change of beneficiary was invalid. However, "The jury could have found, for example, that Mrs. Levy signed her husband's name by permission." Appellant's own handwriting expert testified that her signature to the change of beneficiary was authentic.

COMMENTARY: A case of routine admissibility, but one in which even the expert opinion in appellant's favor was not favorable because the Court of Appeals found a possibility of a jury finding which apparently was not a reality in the record.

## 2002

840. *Parker v State*, 2002 Tex. App. LEXIS 5415 (TX Ct Ap 2002)

Prosecutor informed defense counsel that Dennis Cox would be called as a handwriting expert. Request for continuance was denied by Trial Judge who said defendant could request her own handwriting expert, which she did not do. Later in her testimony defendant said she had written the letter that Cox said she had. There was no abuse of discretion in denying request for continuance.

COMMENTARY: There is no indication that challenge was made to Cox's qualifications or to the reliability of handwriting identification. Acknowledging that the expert's conclusion was right is maybe the best compliment to his reliability.

841. *Reese v Duncan*, 80 S.W.3d 650, 2002 Tex. App. LEXIS 4149 (Ap Dallas TX 2002)

The Trial Court's findings against appellant Reese are affirmed in an accelerated appeal in an election contest. There is an extensive legal discussion of applicable law in overturning election results. The fact issue as to handwriting expertise is considered at [\*5], *et seq.*, and [\*25], *et seq.* Linda James was called by Duncan as a handwriting expert, but for reasons not explained the Trial Court only permitted her to testify as a fact witness. She pointed out similarities and differences among various signatures purportedly by the same person. The Judge did not permit her to point out anything he himself could not observe. The bottom line was that the Court concluded to what her expert opinion would have been if she had been permitted to state it, namely that certain voter signatures were false. Since Reese complained on appeal about James testifying as an expert, nothing was presented for appellate review since she had only testified as a fact witness. Further, the law permits the Trial Court to "compare the signatures on its own and determine the validity without hearing testimony from the voter or other witnesses regarding the similarity of the signatures."

At [\*27-28] the Court of Appeals states: "Thornton Reese argues that James's testimony was insufficient to support the trial court's findings. On cross-examination, James testified she did

not know any of the voters, nor was she familiar with their medical history, the writing surface used when the signature was made, the writing instrument used, or what the voters were doing when they signed the forms. Thornton Reese argues that any one of these factors could have caused differences in the voter's signatures. Also, the voters did not testify. Because it was within the trial court's discretion to compare signatures without the aid of other testimony, it was not necessary that the voters testify. See *Tiller*, 974 S. W .2d at 777. Further, Duncan's burden was to prove by clear and convincing evidence that the signatures were dissimilar, not to show why the signatures might be different. Thornton Reese could have refuted Duncan's evidence by presenting controverting evidence showing that the signatures were genuine, but she did not."

COMMENTARY: As stated previously, there is one point at least on which I agree with the critics, that it is illogical for a court to permit an expert witness to testify to observations but not the conclusion drawn from those observations. It is equally illogical to permit an expert to testify only to observations that the judge can make, as if the expert were not employing expertise in compiling, presenting and demonstrating the observations. The latter happened in this case. Who but an expert could have so expertly discerned the pertinent similarities and differences and so demonstrated them that her unstated conclusion was reasonably arrived at by the fact-finder?

The quote from [\*27-28] is given as preface to suggesting how Duncan's attorney could best have followed up with a question on redirect. After opposing counsel sets forth all the factors your expert did not know about, on redirect revisit each of them. For each factor then ask: "Why did you not investigate this factor?" The expert, if as thorough and diligent as Ms. James is from my own personal knowledge, would reply: "Nothing in the signatures indicates that this factor affected them in any way. This factor causes such-and-such effects in the writing. Therefore, even if it was present, it had no affect on the writing. There is no law that this particular factor must affect the writing in the way research shows that it can in some or even most cases."

## 2003

842. *Goldberg v State*, 95 S.W.3d 345, 2002 Tex. App. LEXIS 6114 (Ct Ap Houston TX 2002); petition for discretionary review refused by *In re Goldberg*, 2003 Tex. Crim. App. LEXIS 313 (TX Cr App 2003); certiorari denied by *Goldberg v. Texas*, 2004 U.S. LEXIS 1219 (US 2004)

Appellant was convicted of a gruesome stabbing murder of a woman. Writings by him describing how he fantasized raping and killing women were introduced by the State to show motive by an otherwise seemingly normal youth. A handwriting expert authenticated these records.

COMMENTARY: Extracts from defendant's writings are given in the case report, and they are not recommended reading for the faint of heart.

## 2004

843. *Pitts v State*, 2004 Tex. App. LEXIS 10808 (TX App. Eastland)

At [\*4]: "Carroll Martin testified that he investigated cases involving forgeries and hot checks before retiring as a police officer from the Stephenville Police Department. He also said that he was a handwriting expert and was trained in handwriting comparison. Officer Martin performed



a handwriting analysis/comparison on State's Exhibit No. 1 (the check) and State's Exhibit No. 3 (the community supervision form filled out by Daniele Pitts). He testified that Daniele Pitts was the author of the check. He also said that Daniele Pitts signed the name 'Angela Ballinger' on the check."

COMMENTARY: A case of routine admissibility.

844. *In the Matter of the Estate of Gene E. Steed*, 152 S.W.3d 797, 2004 Tex. App. LEXIS 11349 (TX App Texarkana 2004); rehearing overruled, 2005 Tex. App. LEXIS 8 (TX App Texarkana 2005)

In a complex case of several issues, the sole handwriting expert testimony was offered by Linda James that decedent had handwritten a 1998 will. The reversal and remand was principally because the Court of Appeals found a non-existent will dated November 20, 2001, to have been duly executed by decedent, based on the computer version of the will and on the testimony of witnesses and of the notary who had previously sued decedent for sexual harassment and whose notary book was not signed by decedent when she notarized the will.

COMMENTARY: A case of routine admissibility, and a hopefully not routine exercise in holding unreality to be compelling evidence. I have an urge to say something regarding the possibility of the forgery of a non-existent but valid will; unfortunately, only non-existent words are worthy of such legal brilliance.

845. *Stokes v Ferris*, 2004 Tex. App. LEXIS 4282 (TX App Austin 2004); petition for review dismissed, 2004 Tex. LEXIS 641 (TX 2, 2004); petition for review denied, 2004 Tex. LEXIS 1012 (TX 2004)

It states that "handwriting experts confirmed that the deed allegedly executed by Jay Stokes was a forgery," though it does not say explicitly that the experts testified at trial.

COMMENTARY: This is included as a case of routine admissibility on the assumption that the experts did testify. I should have left it out of the compilation, but this act of repentance comes too late in the editing process, so let it stand for the hundreds of cases omitted because testimony was not clearly indicated.

846. *Williams, et al., v Walker, et al.*, 2004 Tex. App. LEXIS 3034 (Ct Ap Waco TX 2004); review denied in *Walker v. Williams*, 2004 Tex. LEXIS 713 (TX 2004)

A trespass to try title is reversed and remanded because Trial Court refused to permit appellants to amend their pleadings at trial to assert an affirmative defense based on forgery and statute of frauds. Because of this refusal the scope of testimony by appellants' handwriting expert was limited.

COMMENTARY: I wonder if the limitation on the handwriting expert testimony was lifted since the cause of it was reversed.

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847. *In the Estate of Ruby Fowler Cornes*, 175 S.W.3d 491, 2005 Tex. App. LEXIS 7106 (TX App. Beaumont 2005)

“Lloyd, as the proponent of the holographic will, had the burden of proving that the instrument was ‘wholly in the handwriting of the testator.’ *Tex. Prob. Code Ann. §§ 4(b)* (Vernon 2003); *Gunn v. Phillips*, 410 S.W.2d 202, 205 (Tex. Civ. App. - Houston 1966, writ ref’d n.r.e.). The testimony of two of the witnesses, Lloyd Fowler and Faye Shipman, an expert, [\*13] was clear, direct and positive on the question of whether the 1998 holographic Will was all in Ruby’s handwriting. The only contradictory evidence on the issue, from C.D., was not clear, positive or direct; and, C.D.’s opinion suffers from the fact that there was no proof that C.D. was familiar with Ruby’s handwriting. When a witness is not properly qualified to testify, opinion testimony amounts to conjecture and has no probative value. *Leitch v. Hornsby*, 935 S.W.2d 114, 119, 40 Tex. Sup. Ct. J. 159 (Tex. 1996)”

The case report describes the legal requirements for a holographic will in Texas and other applicable law. The finding by the trial court that the holographic will was not wholly in decedent’s handwriting was reversed. The order not to probate it was upheld since proponent did not show decedent was of sound mind when writing it. Admission of a prior will to probate was found to be error since it had been filed more than three years after death of the testator.

COMMENTARY: The report gives arguments back and forth why the wills in question should or should not be admitted to probate. Facts and law for and against each possibility are debated as it were until the close where the Court of Appeal gives its orders. This makes the case report more interesting and informative reading than the vast majority of them.

848. *Dornbusch v State*, 156 S.W.3d 859, 2005 Tex. App. LEXIS 601 (TX App. Corpus Christi 2005); petition for discretionary review refused, *In re Dornbusch*, 2005 Tex. Crim. App. LEXIS 1841 (TX Crim. App. 2005)

“Marshall Doherty, the owner of the motel, testified that a registration card was filled out by a man matching Dornbusch’s description on December 8, 2000. He also testified to having picked Dornbusch’s picture out of the faculty photographs from a Hidalgo High School yearbook when asked by a school investigator to identify the man who rented the room.

“Kenneth Crawford, a handwriting expert, identified at least thirteen similarities between the handwriting [\*4] on the registration card and Dornbusch’s handwriting, but he could not conclude with scientific certainty that Dornbusch had filled out the card.”

COMMENTARY: Defendant conviction “of inducing sexual conduct by a child” was affirmed. Presumably Crawford’s testimony served either to preempt purported evidence that Dornbusch did not make out the card or to satisfy jury expectation of scientific evidence. I can think of no other reason to have an honest expert testify to a weak opinion. The risk is that such weakness will be attributed to what otherwise is strong evidence.

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## 2006

849. *Delbosque v State*, 2006 Tex. App. LEXIS 3387 (TX App. Dallas 2006)

“Appellant also claims the evidence is factually insufficient. As the fact finder in this case, the jury was free to reject the testimony of appellant’s mother, girlfriend, [\*28] and document expert.”

COMMENTARY: This is the entire discussion of the expert testimony, apparently offered by defendant. It reminds us how marginal our part in a case can be, at least from the viewpoint of judges and juries.

850. *Miller v State*, 208 S.W.3d 554, 2006 Tex. App. LEXIS 2791 (TX App. 2006); petition for discretionary review refused, *In re Miller*, 2006 Tex. Crim. App. LEXIS 1736 (TX Crim. App. 2006)

Defendant’s conviction of capital murder was affirmed. To pay a debt, he used a check he claimed to have gotten from the murder victim as a loan. A handwriting expert testified the check had not been written by the victim.

COMMENTARY: A case of routine admissibility.

## 2007

851. *Barnwell v Eversole*, 2007 Tex. App. LEXIS 6966 (TX App. Beaumont 2007); opinion withdrawn, vacated, appeal dismissed, 2007 Tex. App. LEXIS 7976 (TX App. Beaumont 2007)

At [\*10]: “In contrast to Eversole’s testimony, Barney testified he never signed the letter agreement. Joanne testified she frequently consulted with Eversole both at the office and at the house during the construction phase, although she never talked with him after the suit was filed. There was testimony from handwriting experts: Eversole’s expert testified Barney’s signature was on the letter agreement; Joanne’s expert testified she could not determine the authenticity of the signature. Presented with conflicting testimony, the fact-finder at the temporary injunction hearing was free to believe one witness over another. See *Naguib v. Naguib*, 137 S.W.3d 367, 377 (Tex. App.--Dallas 2004, pet. denied).”

COMMENTARY: This is the entire discussion of the expert testimony.

852. *Dwairy v Lopez*, 243 S.W.3d 710, 2007 Tex. App. LEXIS 8049, 168 Oil & Gas Rep. 184 (TX App. San Antonio 2007)

“Dwairy testified he and Lopez executed the Mineral Deed, which was notarized by Cremar, [\*7] on November 24, 2000. Dwairy denied ever seeing copies of any November 24, 2000 Unimproved Property Contracts. Dwairy’s handwriting expert, William Simpson, testified he examined a copy of Lopez’s known signature and a copy of the questioned signature, and he concluded the signatures were written by the same hand. Likewise, Simpson stated the known signature of Cremar and the questioned signature of Cremar were written by the same hand. Simpson admitted the documents he examined were not the originals, but instead, were certified copies, and he agreed photographic copies can be distorted. Simpson testified that although there

were discrepancies between the known and questioned signatures, he thought there were more similarities than differences.”

COMMENTARY: As Ordway Hilton said, it makes no difference how many more similarities there are than differences; because a single, significant difference that is not reasonably explained prevents an identification and, if cogent enough, compels an elimination. Somehow this myth of numerical preponderance of similarities over differences lives on in face of basic logic, common sense and overwhelming opinion among authorities. It is understandable that nonexperts are impressed by it, but it is inexcusable for one claiming to be an expert in any identification discipline to believe in it.

853. *Fletcher v Harris*, 2007 Tex. App. LEXIS 2961 (TX App. Houston 2007)

Both parties presented lay and expert testimony to support their respective claims that a signature on a will was authentic or forged. The trial court found in favor of Harris that the will was not forged. In part the fact that Fletcher’s expert had not examined the original of the will and only three exemplars weighed against him.

COMMENTARY: Not knowing anything further than what the case report tells us, we cannot fault Fletcher’s expert for the paucity of materials examined. It might well be that the client failed to accommodate the insitencies of the expert, and, if so, for very good reasons of his own. One suspects the three exemplars were carefully chosen as either the models for the forgery or very close to the model used.

854. *Smith v State*, 2007 Tex. App. LEXIS 947 (TX App. Eastland 2007)

Defendant’s conviction for bank robbery with 20-year sentence was affirmed. Dale B. Stobaugh, a supervising forensic scientist with the DPS Crime Laboratory, testified that defendant had written the demand note in the bank robbery.

COMMENTARY: A case of routine admissibility.

855. *Wilkes-Richardson v State*, 2007 Tex. App. LEXIS 5428 (TX App. Eastland 2007); petition for discretionary review refused, *In re Wilkes-Richardson*, 2007 Tex. Crim. App. LEXIS 1498 (TX Crim. App. 2007)

“Mel Francis, a handwriting expert with the Midland Police Department, testified that the signature on Check No. 6529 was not that of Jana Rich. Francis further testified that appellant’s signature [\*12] was on the endorsement of the check. Francis could not determine whether appellant signed Jana’s name on the signature line of the check.”

COMMENTARY: A case of routine admissibility.

## 2008

856. *Friar v State*, 2008 Tex. App. LEXIS 6809 (TX App. Amarillo 2008)

At [\*5]: “The evidence at trial consisted of the discovery of a baggie containing six grams of methamphetamine on appellant’s person. Further, there was the expert testimony of the handwriting expert that opined that the letter [found in defendant’s purse] was in appellant’s handwriting. Later, another police officer, with over 20 years experience in drug trafficking,

testified that the letter was typical of the type of ledger maintained by someone dealing in drugs on the street level.”

COMMENTARY: This is a good example of how an essential fact often must be proved by multiple sources of evidence.

857. *Hannah v State*, No. 13-05-457-CR. (TX Ct. App. 13 Dist. 2008)

Hannah was found guilty of murdering a home-care patient, who was not diabetic, by administering a massive dose of insulin. A previous incident in Oregon was presented at trial. She had worked under an alias, and a patient, Anne Jones, had died under suspicious circumstances while Hannah’s actions were equally suspicious.

Several witnesses testified regarding the Oregon case, among them a handwriting expert: “Jones appeared to have signed a ‘do not resuscitate’ form (‘DNR’), but James Green, an expert in forensic document examination, testified that he did not believe that Jones’s DNR had actually been signed by Jones. In fact, he completely excluded the possibility. Green also examined Hannah’s handwriting, and he applied a system in which the likelihood of forgery is assigned a number on a one-to-nine scale, with nine being the most likely. On this scale, Green testified that the likelihood that Hannah had forged Jones’s signature on the DNR was a seven.”

COMMENTARY: Such numerical statements of probability are outside the consensus in the field of document examination, not least of all because the witness has not offered any numerical data to support his opinion nor can he cite research or other publications supporting numerical statements of opinion.

858. *Ortegon v State*, 267 S.W.3d 537, 2008 Tex. App. LEXIS 6925 (TX App. Amarillo 2008); rehearing overruled, 2008 Tex. App. LEXIS 9610 (TX App. Amarillo 2008); petition for discretionary review refused, *In re Ortegon*, 2009 Tex. Crim. App. LEXIS 601 (TX Crim. App. 2009)

Defendant “was convicted of felony driving while intoxicated and sentenced to 25 years confinement” because of enhancement from two prior convictions. Since the fingerprints on prior records were too poor for an identification, expert handwriting testimony was used to prove both priors.

COMMENTARY: The case report states that the expert had no more than one exemplar to use. Two mistakes were made by defense counsel. First, in Texas if a signature is denied under oath, it may not be proved by expert testimony. Second, competent expert testimony could have countered the questionable use of a single exemplar by citation to many authors in the literature of forensic handwriting identification. Also, there are case reports expressing skepticism about expert opinions based on a paucity of exemplars, whether in number or quality.

859. *Robertson v State*, 2008 Tex. App. LEXIS 8137 (TX App. 2008 Eastland); petition for discretionary review refused, *In re Robertson*, 2009 Tex. Crim. App. LEXIS 580 (TX Crim. App. 2009)

At [\*16]: “The record shows that the enhancement convictions were linked to appellant by a handwriting expert who compared appellant’s signature on State’s Exhibit No. 2 to his signatures on the two convictions used for enhancement. According to the expert, all three were signed by

the same person. Consequently, the evidence is sufficient to link appellant to those convictions and to support the jury's finding of true to the enhancement allegations. Appellant's fifth issue is overruled."

COMMENTARY: One wonders about a handwriting expert who can be certain enough to send someone to prison when there is only one exemplar for comparison. Even if the outlook is inverted and the two enhancement convictions are considered the exemplars, there is just enough to say "indications are," which only raises suspicion.

860. *Samet v. State*, 2008 Tex. App. LEXIS 4916 (TX App. Tyler 2008); petition for discretionary review dismd, 2008 Tex. Crim. App. Unpub. LEXIS 867 (2008); petition for discretionary review refused, *In re Samet*, 2009 Tex. Crim. App. LEXIS 86 (TX Crim. App. 2009)

Defendant's conviction of aggravated sexual assault of a child with life imprisonment was affirmed. His son testified defendant had previously given him sexually explicit notes which a handwriting expert testified were written by defendant.

COMMENTARY: A case of routine admissibility.

## 2009

861. *Obally v State*, 2009 Tex. App. LEXIS 8588 (TX App. Amarillo 2009)

"At the trial, Warren testified for the State and gave an account that identified appellant as the person who had the 'meth lab' and claimed that she had recruited Warren and her male companion to come over and assist in the meth 'cook.' Further, Warren identified a letter that appellant had sent to Warren while both were in jail. The letter, which was introduced into evidence, contained admissions by appellant that she was sorry that she got Warren involved in the meth situation and that appellant took the blame for the meth that was located in the house. The State also provided the testimony of Randy Nelson, an investigator for the State, who is a handwriting expert. Nelson testified that, based upon his examination of a handwriting exemplar provided by appellant, the letter in question [\*5] was written by appellant and did not appear to be altered."

COMMENTARY: A case of routine admissibility.

862. *Rice v State*, 2009 Tex. App. LEXIS 2426 (Tex. Ct. App. Houston 2009)

A handwriting expert called by defense was qualified by stipulation of the prosecution. The expert said he could not say whether defendant wrote the incriminating check because he only had a fax copy sent to his office. After the trial, the judge ordered the expert to do another examination with better materials, and the defendant's expert concluded that defendant had written the incriminating check. That undermined all arguments on appeal.

COMMENTARY: There is a maxim that a cross-examiner should not ask a question if he does not know the answer. Much more so, one should not ask any witness a questionable question, such as ask one's own expert witness for an opinion without assurance of some kind of helpfulness to one's case.

863. *Rivera v State*, 2009 Tex. App. LEXIS 903 (Tex. App. Amarillo 2009)

A handwriting expert testified that the signatures on documents in question were defendant's.  
COMMENTARY: A case of routine admissibility.

## 2010

864. *In the Estate of Ronald Ray Wallis, Deceased*, 2010 Tex. App. LEXIS 1441 (TX App. Tyler 2010)

It was error to admit the testimony of handwriting expert, Denise Jarrett, since what she testified to was outside the pleadings.

COMMENTARY: This is another case that the careless reader, or one who is overenthusiastic to find support for a position, will represent as disqualifying the expert. Never accept interpretation of any writing as established fact until you check it out for yourself. To repeat what I said previously, personally double check any case I discuss before you use it for your own purposes. Being human I might omit a critical point or misstate one. Be skeptical of your own interpretation of a writing, reviewing it and having someone else review it if necessary.

## 2011

865. *Johnson v State*, No. 12-10-00110-CR. Court of Appeals of Texas, Twelfth District, Tyler (2011)

"Randy Hatch had thirty-eight years of experience as a peace officer. He had five of those years with the DEA. Given Hatch's experience, a voir dire examination as to his qualifications in the area of narcotic trafficking would have been superfluous.

"Trial counsel did raise a timely objection to Hatch's testimony as to handwriting and obtained a running objection to Hatch's entire testimony regarding handwriting. We can imagine no trial strategy that might explain trial counsel's failure to attempt to take Hatch on voir dire in order to explore his competency to make handwriting comparisons."

COMMENTARY: There is no indication why the Court of Appeal was so emphatic about a voir dire of Hatch, who did testify as a handwriting expert.

866. *Mascorro v State*, No. 13-11-00112-CR. (TX Ct. App. 13 Dist. 2011)

A kite with marijuana folded up in it was found in the prison cell Mascorro occupied. A kite is a narrow strip of paper with microwriting that prisoners use to pass notes to each other. Kenneth Crawford, a forensic document examiner, testified that there was a "very strong probability" that Mascorro had written the note. Having only a copy, Crawford could not give a definite opinion.

COMMENTARY: A case of routine admissibility.

867. *Morris v Fuller*, No. 02-09-00442-CV. (TX Ct. App. 2 Dist. 2011)

Morris denied having signed an assignment of certain rights to defendant. The court credited the testimony of John Weldon, a forensic document examiner, that the signature on the assignment was Morris's genuine signature.

COMMENTARY: A case of routine admissibility.

868. *Morris v Wells Fargo Bank, NA*, 334 SW 3d 838 (TX Ct. App. 5 Dist. 2011)

Jennifer Fenner Masson, a forensic document examiner, testified for the bank and identified plaintiff's signature on two deeds. The case report recounts her testimony regarding various limitations to her examination and technical possibilities for alternative explanations. The case report shows she did an admirable job of it, and for that it is well worth reading.

COMMENTARY: Masson's qualifications were stipulated to, and plaintiff's request that she be recalled for more testimony was granted. I assume it was in an effort to impeach her opinion, but it seems things only went worse for plaintiff.

## 2012

869. *Arellano v State.*, No. 13-11-00477-CR. (TX App. 13 Dist. Corpus Christi 2012)

"We will address appellant's sufficiency issues together because they are based on a single set of facts. See TEX. R. APP. P. 47.1. In support of her issues, appellant argues Detective Hernandez's handwriting comparison must be excluded in assessing the sufficiency of the evidence because she denied under oath that the alterations on the face of the check were her handwriting. See TEX. CODE CRIM. PROC. ANN. art. 38.27 (West 2005). By her first issue, appellant argues that without the handwriting comparison testimony, the evidence does not show she made any changes to the face of the check, and that proof she lawfully possessed the check and deposited it is insufficient to show she made a forged writing. By her second issue, appellant argues that without the handwriting comparison testimony, there is no evidence to show she intended to defraud another because the evidence does not show she knew the check was altered when she deposited it."

Conviction for forgery was upheld.

COMMENTARY: Texas has a rule that, if a person denies under oath having made a false writing, handwriting comparison *alone* is insufficient for conviction. In such a case corroborative evidence is required. The delicate part is what exactly will constitute corroborative evidence. This case report is an excellent discussion and review of the rulings bearing on this precise issue. Thus, it is particularly recommended to the study of those practicing in Texas and working criminal cases.

870. *Champion v Robinson*, No. 06-12-00032-CV. (TX Ct. App. 6 Dist. Texarkana 2012)

This is not a case of handwriting expertise, but I find it interesting enough on another issue to warrant its inclusion. I have no idea whether this indicates law in Texas.

One footnote reads: "[15] Champion argues we can compare the signature in the record with a signature attached to his brief and determine the trial court erred. Documents attached to appellate briefs do not thereby become evidence. Further, any such comparison would require expert testimony by a handwriting expert."

This is the first time in my recollection that I read in any court decision that the testimony of a handwriting expert would be required. The absence of it is often cited as support for another inference but without statement that it was required. Often enough a decision will mention the other ways in which handwriting can be legitimately authenticated.



871. *Polinard v Gilmore*, No. 04-12-00061-CV. (TX App., 4th Dist., San Antonio, 2012)

“The parties could not agree on an expert so the trial court entered an order on January 6, 2006, appointing Dale Stobaugh as the handwriting expert. The order stated that the parties would share Stobaugh’s cost and expense equally, not to exceed \$1,000.00 per side.”

Polinard so failed to cooperate that he was sanctioned and had rulings given against him, while Stobaugh testified to the difficulties preventing his examining the documents and providing an opinion. Issues ranged from exemplars and failure to provide same, terminology for expressing levels of assurance in opinions, and other fine points of document examination, all topped off with why sanctions were quite justified. Polinard’s failure to pay up his share of Stobaugh’s fee resulted in his paying substantially more.

COMMENTARY: If you enjoy reading how someone gets his comeuppance, you might enjoy the complete original case report.

### *3. Texas Court of Criminal Appeals.*

#### 1994

872. *Zimmerman v State*, 860 S.W.2d 89 (Cr App. Tex. 1993); conviction vacated and remanded on other grounds, 114 S. Ct 394, 510 US 938, 126 L.Ed.2d 324 (1993); conviction upheld on remand, 881 S.W.2d 360 (Cr App. Tex. 1994)

Comparison of handwriting is sufficient proof when handwriting or signature is not denied under oath. A letter from defendant to a former attorney was authenticated.

“Error complaining of insufficient authentication was waived, where complaint on appeal differed from that lodged at trial.”

COMMENTARY: While in jail before trial, defendant wrote letters, one to the District Attorney describing the murder. A less than brilliant move.

#### 2003

873. *Swearingen v State*, 101 S.W.3d 89, 2003 TX Crim App LEXIS (Ct Cr App TX 2003)

Defendant claimed to have received a letter from a third party describing the abduction and murder of the woman whom he was accused of killing. A handwriting expert testified that a list of words with their Spanish translation, of which the letter was composed, was in defendant’s handwriting. This gave evidence that defendant had composed the letter and had another person write it.

COMMENTARY: A case of routine admissibility.

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## RR. UTAH CASES.

### 1. *Utah Courts of Appeal.*

#### 2005

874. *The Berkshires, L.L.C., et al., v Sykes, et al.*, 2005 UT App 536, 127 P.3d 1243, 541 Utah Adv. Rep. 8, 2005 Utah App. LEXIS 552 (UT App. 2005)

Plaintiffs prevailed in a suit to set aside a grant of easement and grant deed recorded in 1999 and purportedly signed by them approximately 22 and 23 years earlier. Judgment was affirmed.

Of facts (a) through (q) in support of the judgment the first three are:

“(a) All six signatures on the Easement Document and the two signatures on the Quit Claim Deed were signed using the same pen.

“(b) Both the Quit Claim Deed and the Easement Document were typed on the same typewriter at the same time.

“(c) George Throckmorton, an eminent handwriting expert, testified that all six signatures are in all likelihood simulated forgeries.”

A lay witness also testified to the falsity of some signatures. Claim of error to both the expert and lay witness to handwriting was based on the Utah provision that, if there is a subscribing witness alive and available, an opinion witness would not be permitted. However, the purported notary had no recall of the matter, so there was no subscribing witness available, contrary to defendant’s claim.

COMMENTARY: Each state may have its own peculiar laws divergent from the common law or the statutory and case law shared by most states. It is advisable to collect and keep the ruling statutes and reported cases for your own state, just as you would keep reasonably abreast of new laws governing your use of your drivers license.

### 2. *Utah Supreme Court.*

#### 1996

875. *State v Crosby*, 302 Utah Adv Rep 36, 1996 UT LEXIS 93, 927 P2 638 (UT 1996)

Conviction for theft and forgery affirmed in part and remanded in part.

“The Court of Appeals transferred the case [to the Utah Supreme Court] for determination of proper standard for admitting scientific evidence.” Polygraph evidence is not admissible, but handwriting expert was sufficiently qualified. Defendant could not dispute inherent reliability of handwriting evidence where defense counsel also took affirmative steps to place it before court. George Throckmorton, defense expert, “indicated that in his opinion, Detective Hutchinson [Prosecution expert] lacked the necessary qualifications to be nationally certified in the field.” Nevertheless, Brent Hutchinson was found sufficiently qualified. *State v Rimmasch*, 776 P2 388 (UT 1989), four years before *Daubert*, had set standards in Utah and was the ruling case on admissibility of expert testimony.

COMMENTARY: *Rimmasch* set essentially the same reliability standards as *Daubert*, and thus one can infer that the two experts would have been equally admissible in Federal Court. I have expressed elsewhere in this text my belief that testimony by one expert that another is unqualified should be considered unethical because it reduces professionalism to cheap backstabbing and invades the legal province of the judge.

## 2003

876. *Cazares v Cosby et al., Headlands Mortgage Co., et al., v Weeir, et al.*; [*Estate of Rosemary Cosby*]; 2003 Utah 3, 65 P.3d 1184, 467 Utah Adv. Rep. 12, 2003 Utah LEXIS 10 (UT 2003)

Trial Court held *in limine* hearing and dismissed Cazares' proffer of handwriting evidence to prove forgery of several deeds allegedly bearing decedent's signatures. Supreme Court ruled this was error. Utah law provides for a subscribing witness to authenticate a signature; and, only if a subscribing witness is not available, may handwriting comparison be permitted to do so. The notaries had not personally seen some signatures signed, so it was error not to permit handwriting expert evidence. For other documents in question, the notaries said they saw the signatures made, so handwriting expert evidence would properly not be permitted for them. For other signatures it was not clear from the record, so the Trial Court had to hold a hearing to determine it.

COMMENTARY: The reliability of handwriting comparison was not contested, only the legal rule on whether it was admissible given the facts of the case.

## 2007

877. *State v Beck*, 2006 UT App 177, 136 P.3d 1288, 551 Utah Adv. Rep. 6, 2006 Utah App. LEXIS 178 (UT App. 2006); writ of certiorari granted, 150 P.3d 58, 2006 Utah LEXIS 189 (Utah, 2006); affirmed, 2007 UT 60, 2007 Utah LEXIS 143 (2007)

Defendant's convictions for forcible sexual abuse and other offenses were reversed and remanded. Part of the evidence against the teacher were letters she purportedly wrote to one of her female high school students. State's fingerprint expert testified that her prints were on one letter, and the handwriting expert testified she had written the letters.

The Court of Appeal stated: "Defendant called several witnesses who controverted K.S.'s testimony and testified that Defendant was not where K.S. claimed she was on particular dates. Defendant also called expert witnesses who testified that the correspondence did not match [\*4] Defendant's composition style and that the handwriting on the correspondence was not Defendant's but was likely written by someone familiar with her handwriting. Finally, Defendant herself testified that she had not had a sexual relationship with K.S., had never sent her romantic correspondence, and had never provided alcohol to her. She testified that she had once given her email password to K.S. and that she regularly gave her writing paper to students."

The judge extensively cross-examined defendant twice in front of the jury and in a prosecutorial manner. That gave such appearance of judicial bias that it was unreasonable to assume it did not contribute to the convictions. The Supreme Court agreed.

COMMENTARY: The way the case report is worded it seems that both linguistics and handwriting experts were called by the defense.

## SS. VERMONT CASES.

### *1. Vermont Supreme Court.*

#### 2002

878. *Eckstein, et al., v Estate of Mildred Lidell Dunn*, 174 VT 575, 816 A.2d 494, 2002 VT LEXIS 334 (VT 2002)

A will had alterations made in red ink. A handwriting expert testified that these changes in red ink were made by decedent.

COMMENTARY: A case of routine admissibility.

## TT. VIRGINIA CASES.

### *1. Virginia trial courts.*

#### 2005

879. *Bowman, et al. v Mericle, et al.*, 2005 Va. Cir. LEXIS 279 (Cir. Ct., City of Norfolk, Va. 2005)

The judge begins by noting there are nine volumes of proceedings, the Court's file is of six volumes, there are three boxes of exhibits, and that no useful purpose would be served in reciting the conflicts in evidence. "The Commissioner's report is thirty-four pages (excluding exhibits), and it resolves the conflicts." It was distressing that only one attorney conducted himself as a gentleman.

Complainant's exception number 9 addresses handwriting expert testimony. "The Commissioner relied on the testimony given by expert document examiner Cina Wong" over that of Farmer and Demonch.

COMMENTARY: This is a case of routine admissibility. Ms. Wong is a certified member of National Association of Document Examiners.

#### 2007

880. *Lee, et al. v. Park, et al.*, 73 Va. Cir. 219, 2007 Va. Cir. LEXIS 80 (Cir. Ct. Fairfax County, Va. 2007)

Plaintiff tenants attempted to defeat an unlawful detainer by claiming receipts proved they had paid full rent. Defendant landlords endeavored to prove forgery, and they prevailed. Regarding their handwriting expert, the judge states:

"I was not persuaded that the testimony of Koppenhaver, the landlords' document examiner, proved that the numeral '1' on the contested receipts was forged. While I recognize Koppenhaver, [\*16] a qualified handwriting expert, may have the ability to discern minute differences in the writing of various individuals, her testimony did not persuade me she could do so in this case."

But the Tenants could not rejoice over that embarrassment to the expert, since it was due to their own action:

“However, it is noteworthy that the Tenants’ failure to maintain original receipts precluded Koppenhaver from comparing the ink used in writing the numeral ‘1’ on the contested receipts. Plainly, such an analysis might have been conclusive. This circumstance [\*17] raises the inference that if the originals had been available, they would have proven the receipts were not in Park’s handwriting. See *Wolfe v. Va. Birth-Related Neuro. Injury Comp. Program*, 40 Va. App. 565, 580-82, 580 S.E.2d 467 (Va. App. 2003) (adverse inference permitted where defendant failed to perform tests that would have established malpractice).”

COMMENTARY: This case also teaches us an important lesson, namely that an expert’s evidence can be helpful by being supportive of other evidence and not necessarily dispositive in and of itself: “Further, the Court received testimony from Koppenhaver, which while not sufficient in itself to prove the forgeries, when considered with all the evidence has been given some, albeit not decisive, weight in considering the forged receipt payment issue.”

Ms. Koppenhaver is a member of National Association of Document Examiners.

## 2008

881. *Indymac Mortgage Holdings, Inc., et al. v. Almquist, et al.*, Civil Action No.: CL06003927 (Cir. Ct. Alexandria VA 2008)

Cina Wong testified for plaintiff that a signature was false, which the purported signatory had denied writing. The court found for plaintiff.

COMMENTARY: A case of routine admissibility. Ms. Wong is a member of NADE.

## *2. Virginia Courts of Appeal.*

## 1999

882. *Beverly v Commonwealth*, Court of Appeals of Virginia, Memorandum Opinion by Judge Larry G. Elder, Record No. 0852-98-2, June 29, 1999.

In conviction for murder and related crimes, it was not error for District Court not to appoint handwriting and fingerprint experts for defendant. “The evidence introduced at trial linked appellant to exhibits 6, the note proposing sex, and 10, the list of ways to disguise oneself, by handwriting, and exhibit 7, another note, by fingerprints.” The exhibits were tied to appellant in other ways.

COMMENTARY: The description of linking the documents to defendant by handwriting suggests this is a case of routine admissibility.

## 2000

883. *Basinger v Commonwealth*, 2000 Va. App. LEXIS 419 (VA Ap 2000)

In a conviction for forgery, sole issue on appeal was “whether the trial court erred in admitting expert testimony on a handwriting comparison. Finding [\*2] no error, we affirm.” Luther M.

Senter was the document examiner with four years at Virginia Division of Forensic Science and thirty previously with the FBI. He testified that he followed a method accepted in his field, such as he “uses a hand held magnifying glass.” It would be error “to refuse to allow an expert witness to state an opinion based on such a comparison,” that is side-by-side comparison of questioned and genuine writings.

COMMENTARY: The case cites the legal authorities on admissibility of handwriting expert testimony in Virginia.

## 2002

### 884. *Barr v Commonwealth*, 2002 Va. App. LEXIS 218 (VA Ct Ap 2002)

Amanda Loving Barr appealed her forgery conviction which was upheld. Forensic document examiner Richard Horton identified Barr as writer of forged time sheets on behalf of her husband. He used “indications” as a positive identification. At [\*6]: “Horton noted that while different inks were used for different documents, each individual form contained only one type of ink, which suggested that the same person and same instrument prepared all parts of the form.” After hearing a proffer of Barr’s husband’s testimony that she did not write the forms, the trial court excluded it because the expert fingerprint, handwriting and ink evidence was more than sufficient to convict.

COMMENTARY: A case of routine admissibility.

### 885. *Keyes v Commonwealth*, 39 Va. App. 294, 572 S.E.2d 512, 2002 Va. App. LEXIS 698 (VA App. 2002)

“On February 27, 2001, Lucille Pullin, an employee [\*2] of Augusta Correctional Center, was sorting outgoing mail when she found an envelope bearing a return address from Randall Keyes and addressed to Roslyn Carter. In 1998, Keyes attempted to rape Ms. Carter. Pursuant to instructions she previously received, Ms. Pullin removed the letter and forwarded it to Sgt. Wayne Thompson, the institutional investigator at Augusta Correctional Center.

“Sgt. Thompson opened the letter and contacted Special Agent Ron Hall [who] examined the letter and submitted it...for handwriting analysis. Richard Horton, a forensic document examiner, determined that the handwriting on the envelope was quite comparable and similar to the known samples of Keyes’ writing. Furthermore, Horton testified that the indented writing found on the letter paper within the envelope resulted from an original writing by Keyes.”

COMMENTARY: The wording suggests the opinion about the indented writing was stronger than that about the original writing on the envelope. This cautions us against always taking case reports as unqualifiedly accurate. I am sure any document examiner will say that examining indented writing is akin to examining a photocopy in the limitations of assurance one can have.

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## 2005

886. *Morrill v Morrill*, 43 Va. App. 621, 600 S.E.2d 911, 2004 Va. App. LEXIS 397 (VA App. 2004); rehearing granted, en banc, stay granted, 44 Va. App. 18, 602 S.E.2d 410, 2004 Va. App. LEXIS 569 (VA App. 2004); different results reached on rehearing, 45 Va. App. 709, 613 S.E.2d 821, 2005 Va. App. LEXIS 289 (2005).

Re 613 S.E.2d 821, in as a divorce action a commissioner heard evidence and found that the husband had deserted the wife. The husband had claimed the wife forged his name in incurring credit card debts, but the commissioner found the evidence of forgery to be in “equipoise.” The husband asked the judge to hear evidence from a handwriting expert on the issue of wife’s forgery, and the judge received this evidence and found it credible for purposes of equitable distribution of property. However, although wife’s forgery contributed to the breakup of the marriage, it was not an excuse for the husband to desert her. The judge also awarded attorney and expert witness fees that the husband incurred in bringing evidence of the credit card forgery by the wife.

In 600 S.E.2d 911, the Court of Appeal had reversed on basis that hearing evidence from the handwriting expert was error. In 613 S.E.2d 821, different results were reached as described above. Thus the trial court’s findings were affirmed on appeal.

COMMENTARY: A case of routine admissibility.

## 2007

887. *Campbell v. Campbell*, 49 Va. App. 498, 642 S.E.2d 769, 2007 Va. App. LEXIS 141 (Ct. App. Va., Richmond 2007)

In a divorce action both parties appealed on several issues, but the matter was reversed and remanded on only one. The trial court had limited the time parties could present their cases, including cross-examination of adverse witnesses. Consequently the husband had run short of time and could not conduct full cross-examination of wife’s handwriting expert, Dr. Hartford Kittel. Since this violated constitutional trial rights that are fundamental to administration of justice, it was not a harmless error.

COMMENTARY: There was no challenge to the admissibility of the expert evidence.

## 2009

888. *Baker v Commonwealth*, 2009 Va. App. LEXIS 75 (Ct. App. VA 2009)

Defense motion to exclude a forensic handwriting analyst was denied in a conviction for forgery.

COMMENTARY: The case report does not discuss the testimony of the forensic handwriting analyst, but since denial of the motion to exclude was assigned as error on appeal, one can safely assume the analyst was found to be reliable and testified at trial.

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## 2012

889. *Hopper v Commonwealth*, Record No. 2492-10-2. (VA App. 2012)

A handwriting expert testified that defendant's handwriting was not on the forged checks, but his girl friend's was.

COMMENTARY: A case of routine admissibility.

### *3. Virginia Supreme Court.*

## 2001

890. *Kidd, et al., v Gunter, et al.*, 262 VA 442, 551 SE2 646, 2001 Va. LEXIS 97 (VA 2001)

The Supreme Court affirms the probate court's finding that decedent had handwritten a journal that had testamentary intent but that the name at the start was not the statutorily required signature, and thus the journal was not a holographic will. At [\*3]: "At a hearing before the circuit court, two witnesses testified that the handwriting appearing on the inside cover of the journal and on the pages numbered 1 through 12 is that of the decedent. A witness who qualified as an expert in document examination agreed. However, the expert explained that Fore wrote some of the passages in different inks and that she did not write all the pages of the journal offered as her last will and testament at the same time." At [\*9] it is stated that nothing indicated that the purported will was completed and adopted by decedent. "With regard to the lack of finality, it is also significant that there was undisputed evidence that Fore wrote the passages in different inks and at different times."

COMMENTARY: It would be interesting to know the details of the "undisputed evidence" that writings were made at different times.

## 2005

891. *WBM, LLC v Wildwoods Holding Corp.*, 270 Va. 156, 613 S.E.2d 402, 2005 Va. LEXIS 53 (2005)

At page 404, plaintiff called an adverse witness and asked if he still denied his signature on a contract, and he said that he did. "However, his sister, Susan, testified that the signature on the contract was Jerry's and a handwriting expert testified to the same effect."

COMMENTARY: However, defendant prevailed at trial and on appeal because of other issues.

## 2006

892. *Grubb, et al. v Grubb*, 272 Va. 45, 630 S.E.2d 746, 2006 Va. LEXIS 57 (2006)

Decedent, Evan Belle Logan, left her estate to be divided equally among her seven siblings, and she appointed one brother, Ernest, to be her executor. It was alleged that the executor was falsely representing that part of the estate had been his joint property with decedent and so was not to be shared with the other siblings. As part of the evidence against Ernest, Roy, another



brother, called a handwriting expert as described at page 750: “Dr. Larry Miller, a forensic document examiner who qualified as an expert witness, also testified as part of Roy’s case. He opined that Ernest, not Logan, actually signed Logan’s name on all but one of the Washovia certificates at issue.”

Thus, it was proved that Ernest was not frank in representing the alleged joint accounts. The chancellor at trial “found that the remaining seven accounts were created by Ernest using his power of attorney and, thus, Ernest’s actions involving these accounts were subject to a presumption of constructive fraud.”

At page 752 it is stated that Ernest’s testimony was rejected on credibility issues, among which were self-contradictions. “After making this observation, the chancellor accepted Dr. Miller’s opinion that Logan had signed only one of these certificates.”

COMMENTARY: Dr. Miller is a member of National Association of Document Examiners and head of the forensic science department at East Tennessee State University which offers accredited courses in document examination leading to a degree certificate.

## UU. WASHINGTON CASES.

### *1. Washington Courts of Appeal.*

#### 2000

893. *State v Lee*, 99 Wn. App. 1006, 2000 Wash. App. LEXIS 128 (WA App. Div. 1, 2000)

A handwriting expert testified that she could not identify Lee as the one who passed stolen and forged checks. However, she was identified by store personnel as the one who passed the checks.

COMMENTARY: One is mystified why expert testimony is presented to help the fact finder when no helpful information is provided by the expert. The positive side of it is that it is another case of routine admissibility.

#### 2001

894. *State v Carstensen*, 2001 Wash. App. LEXIS 1459 (WA App. Div. 2, 2001)

“A handwriting expert could not identify or eliminate Carstensen as the writer, signer, or endorser of the check, but stated that there were indications that she fit all three categories. [\*4] She added that these indications equaled a weak conclusion that Carstensen forged the check.”

Later: “With regard to whether the check was falsely made or completed, Lien testified that she did not write or sign the check Carstensen cashed. That check misspelled Lien’s first name in the same way that some of Carstensen’s handwriting samples did. Furthermore, according to the State’s expert, there were indications that Carstensen wrote and signed Lien’s name on the check. Viewed in the light most favorable to the prosecution, [\*7] this evidence is sufficient to show that the check was forged by Carstensen.”

COMMENTARY: The handwriting expert misinterpreted the meaning of “indications are.” The result was a conviction based only on suspicion. Given Albert S. Osborn’s observation that

everyone writing in the same language and system will have similar features, there will be “indications” many people made the forgery in question, maybe including the expert witness.

## 2002

895. *State v Sullivan*, 2002 Wash. App. LEXIS 626 (WA App. Div. 1, 2002)

“Before trial, the State disclosed to Sullivan that it intended to call handwriting expert Sgt. Robert Floberg to testify that Sullivan wrote the check on Baker’s account that gave rise to Count II. But [\*12] on the morning of the second day of trial, the prosecutor, for the first time, asked Sgt. Floberg to examine the check underlying Count IV as well. When court convened later that morning, the prosecutor sought permission from the court for Sgt. Floberg to testify that the handwriting on the check in Count IV matched Sullivan’s. The court agreed to allow the testimony, but granted the defense additional time to have its handwriting expert examine the check.

“After Sgt. Floberg’s testimony, defense expert Hannah McFarland testified that the results of her analysis on the question of whether Sullivan wrote the check in Count II were ‘inconclusive.’ Court then recessed for the day, and Sullivan asked McFarland to examine the check in Count IV that evening.

“It appears that she concluded that there were ‘indications’ that Sullivan had written the check. Sullivan then moved for a mistrial on the basis that he was now faced with calling an expert who would testify unfavorably as to Count IV. The court deferred ruling on the motion, but precluded the State from asking McFarland about her opinion on the check in Count IV unless Sullivan did so. Sullivan decided to do so. After McFarland testified, [\*13] Sullivan renewed his motion for a mistrial. The court denied the motion.”

COMMENTARY: There is discussion as to why denial of the motion for a mistrial was not error. McFarland used “indications” in its precise meaning, that some writing traits in the Count IV check were similar to defendant’s, nothing more. If properly argued, McFarland’s opinion supported acquittal because it was tantamount to saying that technically it could not be proven at all, much less beyond a reasonable doubt, that defendant had written the Count IV check.

Hannah McFarland is a member of National Association of Document Examiners.

## 2003

896. *State v. Bean*, 2003 Wash. App. LEXIS 1692 (WA App. Div. 1, 2003); reported at, 117 Wa. App. 1082, 2003 Wash. App. LEXIS 2213 (WA App. Div. 1, 2003)

Footnote 6: While Bean maintained that she did not write the checks, a forensic handwriting expert testified that the checks were all written by Bean.

Conviction on 13 counts of forgery was affirmed.

COMMENTARY: A case of routine admissibility.

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897. *State v. Folsom*, 2003 Wash. App. LEXIS 2394 (WA App. Div. 2, 2003); reported at 118 Wn. App. 1077, 2003 Wash. App. LEXIS 3243 (WA App. Div. 2, 2003)

A letter in question was sufficiently authenticated for admission into evidence when a handwriting expert testified it was highly probable that defendant had written it.

COMMENTARY: A case of routine admissibility.

## 2004

898. *State v. Hosier*, 124 Wn. App. 696, 103 P.3d 217, 2004 Wash. App. LEXIS 3047 (WA App. Div. 1, 2004); review granted, 155 Wn.2d 1011, 122 P.3d 186, 2005 Wash. LEXIS 821 (WA 2005); affirmed en banc, 157 Wn.2d 1, 133 P.3d 936, 2006 Wash. LEXIS 424 (WA 2006)

“P4 Smith notified the police [of sexually explicit notes he found]. Based on a comparison of the notes with samples of Hosier’s handwriting on file from his registration as a sex offender, a handwriting examiner opined that there was a 75 percent chance that Hosier had written the notes. Smith was worried that the notes were intended for his 13-year-old daughter, M.S., who frequently played on the lawn and had been playing on the lawn earlier that day.”

Other notes were found by others, all describing desired sexual acts with young girls. The texts are given. The legal question was legitimacy of court ordered handwriting samples to be collected from defendant’s home after expert had identified him as writer. Court wanted a more assured conclusion.

“[22] P39 Hosier also asserts that there existed ‘no basis for believing that forensic evidence could tie a particular marker’ to the notes he had written. The record supports the trial court’s conclusion that there was probable cause to issue the warrant. Hosier provides no authority or evidence to support his assertion that forensic science would be unable to link the materials found in a search of his residence to the notes found at the Smith residence, the day care, or Bartells.”

COMMENTARY: I could read only two samples of the defendant’s notes that he left where young girls might find them. Such a man must be radically ill in mind, emotionally immature, and callous concerning the trauma his notes would cause youngsters.

## 2005

899. *Hoechlin, et al., v Urbiha, et al.*, 2005 Wash. App. LEXIS 850 (WA Ct. App. Div. 2 2005)

Urbiha was granted summary judgment since she was a witness, whether expert or not. She had acted as handwriting expert in identifying plaintiff as writer of false mail orders whereby neighbors received unsolicited merchandise. Criminal prosecution was dismissed, since Rosemary Brehm of state crime lab and Jim Green said Hoechlin could not be identified or eliminated as writer.

Urbiha was properly dismissed as defendant but it remained to be determined whether she acted in good faith in submitting to prosecutor’s office exemplars that state lab people had not seen. After that, her request for reimbursement of her costs could be considered.

COMMENTARY: Though there was no expert testimony in this case, there was in the underlying case.

900. *In Matter of Adoption of B.D.W.*, No. 23001-5-III. (WA Ct. App. 3 Div. 2006)

The natural father, Junior, brought motion to block the adoption of his child by the grandfather. Junior's attorney presented expert testimony that the signature on a consent form was not written by Junior. Junior testified by phone from the U.S. Air base in Japan where he was stationed that he had not signed the consent form since he was on active duty in Japan on the day in question. Two forensic document examiners for grandfather testified that he had signed. Junior asked if the sergeant who was with him could testify by phone, but the objection of non-disclosure of the witness was upheld. A request by Junior for a continuance so that the sergeant, whom he had disclosed but who was called to duty, could testify was denied. Junior lost the motion and was ordered to pay grandfather's costs. The appeal court cited a special provision of law that said Junior's motion for reconsideration should have been granted in the interests of substantial justice. The vagaries of military operations prevented the leave that Junior and his witness the sergeant anticipated so that they could give live testimony and present military records. The case was remanded and ordered to be heard by a different judge lest bias affect the hearing.

COMMENTARY: It would be interesting if Junior did prove his physical absence through military service on the other side of the world. If perchance he did, how would the two document examiners for grandfather explain their assurance he was on this side of the world at the same time?

901. *State v. Robinson*, 2006 Wash. App. LEXIS 1782 (WA App. Div. 1, 2006); reported at 134 Wn. App. 1037, 2006 Wash. App. LEXIS 2230 (WA App. Div. 1, 2006)

Defendant was convicted of domestic violence. Victim claimed she went to his place, and while they made love she bit him, after which he beat her up. She escaped and called the police on her cell phone. In defense he said victim arrived at his place already beaten and attacked him when he tried to hug her. He also presented a recantation purportedly written by her.

"In the defense case-in-chief, Robinson presented the testimony of Virginia Rider, a graphologist. A graphologist is someone who examines handwriting [\*4] to determine personality traits of the writer. testified that she found significant similarities between the statements [recantation] and known samples of Adams' writing and concluded that Adams did write the statement. On the stand, Rider corrected her earlier written report, in which she had written that there were significant differences between the two samples.

"Before the defense rested, the State informed the court that it intended to call three rebuttal witnesses: Adams, Garza, and Tim Nishimura. Nishimura was a forensic document examiner at the Washington State Patrol Crime Laboratory.... Nishimura testified that the quality of the photocopied documents Rider examined was too poor to be useful for forensic [\*5] examination. In Nishimura's opinion, Adams did not sign the statement, and Adams probably did not write the statement. Nishimura also stated that Rider's training and credentials were of dubious value for forensic document examination."

COMMENTARY: Defense objected to the rebuttal witnesses on the basis they properly should have been called in the State's case-in-chief. However, the issue they addressed arose

only in the defense's case-in-chief. Defense counsel should have objected to the testimony by Nishimura about Rider's qualifications which are the sole concern of the court. No expert is an expert on the qualifications of other experts, a matter that the NADE Code of Ethics makes explicitly unethical for its members to opine about. I believe only presumptuous arrogance combined with ignorance of the law would inspire private persons or organizations to presume to dictate to courts of law what is or is not legally qualifying of any witness. Likewise, I suspect it is only a deep-seated inner nagging about one's own inadequacy that compels such bullying of others.

If Nishimura had the same materials as Rider, his opinion was no better than he said hers was. On the other hand, if he had other and/or better material, Rider was denied what was in the possession of Nishimura, and he would be a bit questionable in criticizing her for doing the best she could.

## 2010

902. *State v Rekdahl*, 2010 Wash. App. LEXIS 280 (WA App. Div. 2, 2010)

“¶¶11 At trial, the State admitted Rekdahl's address book, which contained 'Newman' handwritten on the last page. 7 RP at 795. A handwriting expert also testified that Rekdahl's handwriting matched notes found inside an atlas. The atlas had a map marked that depicted the area of town in which Newman's house was located. A jury found Rekdahl guilty on all four counts and found that he used a firearm for each count.”

Newman owned the house which defendant and two companions forcefully entered, beating Newman and killing one of his guests. Convictions were affirmed.

COMMENTARY: A case of routine admissibility.

## 2011

903. *State v Silvis*, No. 66961-3-I. (WA Ct. App. 1 Div. 2011)

“Brett Bishop, a documents examiner with the Washington State Patrol, testified that he conducted a handwriting analysis of the checks, using writing samples from Finley and Silvis. For eight checks, Bishop determined that Finley probably did not sign the check or write the payee information, but he could neither confirm nor exclude Silvis as the signer or the writer on those checks. For one of the eight checks, Bishop found indications that Silvis wrote the payee information. His analysis of four checks yielded inconclusive results. And his analysis of three checks indicated that Finley did not sign them. Bishop concluded that only one check appeared to have been written by Finley. He explained that a document examiner has difficulty determining the author of a simulated signature because the author masks her own handwriting in the attempt to copy another's.”

COMMENTARY: A case of routine admissibility.

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2012

904. *State v Guerrero*, No. 65817-4-I. (WA Ct. App. 1st Div. 2012)

Brett Bishop testified that the judge's signatures on a 1994 dismissal document for defendant were "cut and pasted" from the 1984 judgment and sentence for defendant. It was stipulated that neither defense nor prosecution could find the former attorney nor even if he were alive or dead.

COMMENTARY: See the earlier discussion of the same issue in *U.S. v Brewer*, see Item 28. Guerrero could have done better with the questionable perspicacity of the anti-expert experts provided Washington State trial judges are as gullible as at least one federal trial judge appeared to be.

905. *State v Hennigan*, No. 41815-1-II, Consolidated with No. 42142-9-II. (WA App. 2 Div. 2012)

COMMENTARY: This is a case of routine admissibility which, being a criminal case, should have been a case of routine disallowance of the supposedly expert evidence. Whether deliberately or unawares, the case report characterizes the handwriting expert's evidence as merely suggestive. Immediately after one such characterization, comes this interesting passage:

"Accordingly, because the State's evidence that Hennigan fraudulently used Malich's check was overwhelming, we hold that the trial court's abuse of discretion in admitting evidence that was irrelevant and whose prejudice outweighed its probative value was harmless because it did not prejudice the outcome of Hennigan's trial. Thus, we affirm Hennigan's convictions."

Thus it seems once more that, in order to prove its case, the prosecution needs evidence asserted to be relevant and not improperly prejudicial. Upon conviction and appeal, the same prosecution argues that the same evidence was not needed for conviction and was harmless, however irrelevant and improperly prejudicial it was. As I may have intimated elsewhere in this text, such behavior has an aroma of duplicity wafting from it.

## *2. Washington Supreme Court.*

2004

906. *In the Matter of the Disciplinary Proceeding Against Ricardo A. Guarnero, Attorney at Law*, 152 WA2 51, 93 P3 166, 2004 WA LEXIS 512 (WA 2004)

In a factually complex case of disbarment, the central issue was whether Guarnero forged his client's signature, faxed it to the trial judge and opposing counsel, then was deceitful in covering the forgery. The client denied having made the signature in question when she saw it for the first time at a later date, and a handwriting expert testified at the disbarment hearing that the signature was either an imitation or tracing. The Supreme Court of Washington upheld the disbarment, citing the handwriting expert's testimony as part of the evidence.

COMMENTARY: A case of routine admissibility.

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## VV. WISCONSIN CASES.

### *1. Wisconsin Courts of Appeal.*

#### 2000

907. *State v Czarnecki*, 2000 WI App 155, 237 Wis. 2d 794, 615 N.W.2d 672, 2000 Wisc. App. LEXIS 717 (WI App. 2000)

“P6. In response to Czarnecki’s first argument, we disagree with his claim that the evidence at trial did not support the facts alleged. To the contrary, we find the evidence sufficient for a reasonable jury to infer that Czarnecki signed the checks as another person. For instance, originals of the checks were exhibits available to the jury. The jury reviewed the checks and was allowed to make its own assessment of the indecipherable surname scrawl. Even though Czarnecki insists that there is no proof that he did not sign ‘Czarnecki’ when endorsing the check, the first letter [\*6] of the surname scrawl is clear; it is the letter ‘D.’ The jury could have easily noted the obvious distinction between the written letters ‘D’ and ‘C.’ Furthermore, although the State’s handwriting expert could not decipher the surname on the endorsements, this fact is inconsequential because that was not the witness’s proclaimed expertise. The expert testified about his comparison of Czarnecki’s handwriting sample and the handwriting on the checks. He concluded that the handwriting was the same. When asked about the indecipherable scrawl in place of the surname, the expert testified that ‘one of the characteristics within handwriting ..... [is the] tail off on the end of a signature..... In some cases that’s an indication of genuineness, other cases it may be a form of disguise.’ We conclude that sufficient evidence supports the jury’s inference that Czarnecki signed the checks as another person.”

COMMENTARY: Since deciphering illegible letters was outside the expert’s personal expertise, it ought not have been ventured into. In another situation, an astute defense attorney might have successfully argued the expert be disqualified. The logic of indecipherableness having only one of two effects, each supportive of the prosecution’s theory, suggests other than an objective and unbiased witness.

#### 2006

908. *State v Knox*, No. 2005AP298-CR. (WI Ct. App. 1st Dist. 2006)

“¶7 The case proceeded to trial. The State offered the other-acts evidence through the testimony of Paul Janicki, the Milwaukee Police Department’s chief document examiner and Aaron Weiss, a former investigator in the Milwaukee District Attorney’s office. Janicki identified a report he prepared identifying sixty signatures on absentee ballots that did not match the signature on the absentee request form, including Dawson’s name.”

COMMENTARY: A case of routine admissibility.

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## 2007

909. *Landmark Credit Union v Borum*, 2007 WI App 251, 306 Wis. 2d 449, 742 N.W.2d 76, 2007 Wisc. App. LEXIS 942 (WI App. Dist. 1, 2007); review denied, 2008 WI 40, 2008 Wisc. LEXIS 226 (WI 2008)

Borum presented handwriting expert testimony that papers purporting to bear her signatures were forged. The court ruled the signatures genuine. The appeal court said that, if the trial court had conducted its own handwriting comparison, it is upheld. However, if it did not, it should hold hearings to resolve the issue if necessary.

COMMENTARY: The appeal decision is a bit more complex than that, so it might be of interest to read it. The report does state explicitly that the handwriting expert was found qualified.

910. *State v Kamlager*, No. 2006AP1103-CR. (WI Ct. App. 2nd Dist. 2007)

“¶¶ 45 Forensic document examiner Jane Lewis testified. Kamlager’s attorney stipulated to her findings that a portion of each of the Yorks’ two stolen checks was written by Wanda Greenlee and a portion was written by Gerald Kamlager.”

COMMENTARY: A case of routine admissibility.

### *2. Wisconsin Supreme Court.*

## 1998

911. *State v Gray*, 590 NW 2d 918, 590 N.W.2d 918 (WI 1998)

A document examiner testified that one person wrote printed portions of several forged prescriptions.

COMMENTARY: A case of routine admissibility.

## WW. WYOMING CASES.

### *1. Wyoming Supreme Court.*

## 1991

912. *Hamburg v State*, 820 P2 523 (WY 1991)

Court summary: “(1) nomination petition [for candidacy in election] could be subject of forgery...; (4) evidence was sufficient to support conviction with respect to some signatures but not others...” Appellant of the New Alliance Party sought the seat vacated by Congressman Dick Cheney. Some signatures that he collected were suspicious, and upon investigation “it appeared that some of the signatures on the petition were obtained from the cemetery.” At page 525.

Footnote 2 then reads: “The state, in Count 1 of the information, explained this Chicago voting phenomenon differently: ‘[E]ach of them being then deceased.’ At oral argument in *Schutkowski v. Carey*, 725 P.3d 1057 (Wyo. 1986), counsel for appellee accounted for one of the original



actors in unambiguous language: ‘He was deceased and remained deceased through the entire trial.’ Former Wyoming State Senator Win Hickey said she wanted to be buried in Chicago so that she could remain active in politics.”

Richard L. Crivello was the document examiner for the State. “He concluded that some of the signatures had been forged. He gave his opinion that appellant had probably written at least twenty-one of the names on the petition.” The Court then defines “forgery” and “writing.” Appellant’s contention that a petition cannot be the subject of a forgery is defeated because it is the “substance of the instrument, as distinguished from its form or name, [that] is determinative of whether it may support a charge of forgery.” At pages 525-526. Nor does fact no one was harmed help him: “Appellant cannot be absolved because his scheme was unmasked before his name was actually placed on the ballot.”

At pages 529-530 the discussion underlines the excellence of using the terminology for certitude in handwriting opinions first established by ABFDE and later adopted by other organizations, most notably ASTM Committee E-30. Having clearly explained his methodology, “The expert testified that the names of Sandra Dockins and Suzanne Pratt were *definitely* written by Mr. Hamburg. He testified that several other signatures on the petitions were ‘*very probably* prepared on the petitions by Mr. Hamburg.’ (Emphases added.)” The Court then defines “probability” and equates it to levels of proof required at trial. Conviction for forging other than the names “definitely” written by Mr. Hamburg was overturned, the two “definitely” written by him equated to proof beyond a reasonable doubt.

COMMENTARY: Though pre-*Daubert*, this case is well worth citing when terminology for expressing certitude in handwriting opinions is challenged. This is the earliest reported court case that I have reviewed where the parallel to levels of proof at trial suggested in commentaries on other cases reviewed herein is directly confirmed. Hopefully, authors and organizations in document examination will incorporate the parallel in the official statement of the terminology, and also restate it as being truly a five-step range. As noted in comments on other cases, the careful use of the terminology of probability showed that Mr. Crivello was being very scientific and precise in his examination, evaluation and reporting of the handwriting evidence.

## 2000

913. *Helm v State*, 2000 WY 56, 1 P3 635, 2000 Wyo. LEXIS 63 (WY 2000)

It was not misconduct for prosecutor to argue in rebuttal that defendant did not call a handwriting expert while State did, and the expert gave concrete reasons for his opinions. Nor was it impermissible argument when prosecutor “told a fictional story about a well-dressed gentleman pickpocket, to whom he compared Helm....” At page 640. Then the Wyoming Supreme Court displays its sense of humor as it did in *Hamburg v State*: “The prosecutor’s characterization, in closing argument, of Helm as a gentleman pickpocket is almost flattering compared to the closing argument we reviewed in *Tennant*. There, we declined to find plain error in a closing argument wherein the prosecutor referred to the defendant as ‘a leech, a blood sucker, and a predator on society’ and suggested he ‘might go out and find crippled children to pick on next.’ 786 P.2d at 346.”

At page 641 the comment in rebuttal argument that defendant did not call a handwriting expert is discussed: “Viewed in context, however, the statement was a comment on the absence of evidentiary support for the defense’s theory that the victim actually signed all the questioned checks himself.” The Government may call attention to lack of evidence on a point, which is not to comment on failure of a defendant to testify.

COMMENTARY: The entire context of the decision intimates that the Court thought that expert handwriting evidence is reliable. However that may be, this case plainly supports the admissibility of the expertise as clearly reliable and helpful to the fact finder in determining a fact in issue.

## 2002

914. *McGarvey v State*, 2002 WY 149, 55 P.3d 703, 2002 Wyo. LEXIS 164 (WY 2002)

Footnote 1 reads in its entirety: “The handwriting expert testified to six levels of confidence that can be given when asserting an opinion as to whether a person wrote or signed a particular document. The third level is ‘indications,’ meaning that the writings or signatures are similar in structure. The fourth level is ‘probable,’ meaning that it is more than likely that a particular person wrote or signed a particular document; the fifth level is ‘highly probable,’ meaning that a particular person is the author of a particular document or signature, but there exists a remote possibility that someone else could have written or signed the document; and the sixth level is ‘conclusive,’ meaning no other person could have written or signed a particular document.”

At [\*7]: “While the State’s handwriting expert could not conclusively determine that McGarvey had signed the forged checks, he could not exclude her either. The signature on all the forged checks showed ‘indications’ that McGarvey had signed them. This, in itself, would not suffice to convict McGarvey, but is probative and corroborative evidence that McGarvey executed the checks. We conclude that the evidence, when viewed in a light most favorable to the State, was sufficient for reasonable individuals to conclude that McGarvey was the person who fraudulently wrote or used the preprinted checks belonging to Bucknell.”

COMMENTARY: I reproduce Footnote 1 in its entirety to illustrate how courts of law nearly uniformly view the standard terminology in document examination for expressing assurance in expert opinions. The second quote shows how the courts may then reason in evaluating the evidential value of the terminology. I submit that the proper evaluation is that technically it cannot be proven the defendant forged the checks and is not in the least probative nor even corroborative, merely supporting a reasonable suspicion such as to support an issue of a search warrant or a request for exemplars.

915. *Williams v State*, 2002 WY 184, WY LEXIS 222, 60 P3 151 (WY 2002)

A *Daubert* hearing was granted on proposed handwriting expert, Mr. Crivello, who “stated that he had never failed proficiency testing of his work in the area over the past 16½ years and spoke about the substantial history of the field of document examination and his familiarity with numerous recognized books in this field. He also addressed various technical changes in the field, peer review publications, and articles which support that trained experts can discern pertinent information from their analysis of documents which lay persons cannot.”

Ruling that the expert's testimony was admissible, the Trial Court said: "Again, the Court agrees that the area of handwriting analysis has been utilized in Wyoming and has been relied upon by trial courts.... Again, the Court sees no reason to exclude the testimony of Mr. Crivello under traditional expert witness standards nor under the *Daubert*-type analysis." The Supreme Court stated: "Accordingly, we hold that the district court properly considered each of the four enumerated factors first set forth in *Daubert* and thereafter explicitly adopted by this court in *Bunting*. Likewise, the court appropriately found that the proffered handwriting expert was sufficiently qualified through adequate experience and specialized expertise in the area as expressed in *Bunting*." Appellant argued Crivello was not certified and that handwriting analysis suffered various flaws.

The decision quotes 15 Am. Jur. Proof of Facts 3d, *Handwriting Identification*, § 27 (1992): "The ability to detect forgeries and identify handwriting is gained primarily through self-study and experience." The book, Jay Newton Baker, *Law of Disputed and Forged Documents*, Charlottesville, VA, Michie Co., 1955, is also quoted. An explicit ruling is made: "Finally, we take this opportunity to clarify that this court does not adopt that rule of law expressed in the opinion *United States v. Starzecpyzel*..., holding that forensic document examination cannot be regarded as scientific knowledge within the meaning of the rule regarding admissibility of expert testimony and that as such, a *Daubert*-style review did not prove necessary in such an instance."

Crivello expressed no opinion as to whether defendant had written anything on the checks in question, only that the victim had "probably" or "very probably" not written any of it. Also, his evidence was not the sole evidence of guilt, so it need not have been beyond a reasonable doubt.

COMMENTARY: This is an excellently reasoned opinion by the Wyoming Supreme Court and is recommended to your study. Crivello showed mastery of the writings in the field and a facility to explain all aspects of his expertise with clarity. No factor supporting his admissibility seemed to have been left out. Knowing which texts and articles in our field that courts have quoted with approval will provide a firm basis to show that one's own reliance on them is reasonable.

## 2005

916. *Davis v State*, 2005 WY 93, 117 P.3d 454, 2005 Wyo. LEXIS 113 (WY 2005)

"The appellant claims that the district court abused its discretion in admitting the expert trial testimony of Chris Reed (Reed), a self-described 'document examiner....'" Reed was properly qualified and testified that defendant made out credit card slips he was accused of forging. This testimony did not prejudice him for several reasons, one being he had admitted to writing them.

COMMENTARY: The challenge to Reed's qualifications and testimony were properly overruled.

## 2008

917. *Cooper v State*, 2008 WY 5, 174 P.3d 726, 2008 Wyo. LEXIS 6 (WY 2008)

The trial judge held an *in limine* hearing in which he held Officer Chris Reed was qualified as a handwriting expert and offered reliable testimony. Cooper's own expert testified to two

opinions, first, Reed was not qualified, and, second, her methodology was proper. Wyoming Supreme Court had adopted the reasoning in *Daubert* in *Bunting v Jamieson*, 984 P.2d 467 (Wyo. 1999), but had not abandoned its own precedents.

COMMENTARY: Reed had taken the two-week Secret Service Course, had more than five years experience in which she had examined “100-150 documents.” I suspect these numbers were for cases, not documents, since a single case might have 100 documents. However, she had systematically and satisfactorily testified to all *Daubert* and *Bunting* criteria for admissibility of expert testimony. Hardly a document examiner would not concede she had modest qualifications if one only looked at paper, but in practice she left a record that is highly commendable as an example how to meet the challenges of an *in limine* hearing on reliability and admissibility.

I recommend this case report to all handwriting experts, especially those practicing in Wyoming. Neither name nor background information is given for Cooper’s expert, which might be kindly to this expert who in essence said Reed used correct methodology but was not qualified to be correct. Might the expert have said, if asked, she was only qualified to be incorrect? It brings to mind what a colleague of mine told me. An opposing expert said she gave a correct opinion but was not qualified to do so. Most of us would say giving a correct opinion is the hallmark and acid test of competence. Most important, since the law is that no witness can be an expert in the qualifications or credibility of another witness, forensic associations should consider it unethical to give such testimony. Surely, attorneys ought to object vigorously when an ill-advised and impertinent opposing “expert” presumes to tell judge and jury what their legally reserved findings should be.

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## APPENDIX OF ADDITIONAL CASES

The following cases were found after the compilation had been fully indexed and the table of contents generated. Everyone who has compiled a work of this sort knows one never completes it; one just stops at an acceptable stopping point. A new edition is called for before the current edition can be published. Unless one is a bit mad, with an affliction called bibliomania, one does not undertake these kinds of projects. Be thankful that the insanity is mild and only expressed in the harmless drudgery by which Ben Johnson defined a lexicographer. Every compiler of similar works is either a kind of lexicographer or a close relative. Against such madmen you do not have to lock your doors unless you have a lovely library with the treasures that alone alleviate the compulsive consumption of the bibliographer. Be reassured further that the data in your treasured texts, and not the treasures themselves, will be consumed and taken away, not for hoarding but to make the information, gathered and neatly organized, available to all the world, the vast majority of whom has enough good sense to focus on the more pressing needs and more pleasurable wants of human life.

918. *Amusement Industry, Inc. dba Westland Industries; and Practical Finance Co., Inc., v Stern, et al.*, No. 07 Civ. 11586 (LAK) (GWG). (US DC S.D. NY 2013)

A document examiner supported a party's testimony that his signature on key documents had not been written by himself.

COMMENTARY: A case of routine admissibility.

919. *Burrows v Orchid Island Trs, LLC, Successor to Opteum Financial Services, LLC; et al.*, Case No. 07cv1567 - BEN (WVG); Order on Motions In Limine (US DC S.D. CA 2010)

Motion in limine granted to exclude handwriting testimony by Curtis Navy for plaintiffs. There had been no statement as to his qualifications.

COMMENTARY: When a man courts a lady, she will hardly agree to set a date when he forgets to mention the proposal for marriage is based on his ability to be the kind of husband she is looking for.

920. *In the Matter Of: Debbie L. Gunsteen, Debtor. Harris N.A. v Gunsteen*, Bankruptcy No. 11 B 10055, Adversary No. 11 A 01359. (US Bankr. Ct. N.D. IL 2013)

James Hayes was handwriting expert for Harris N.A. Hayes testified Gunsteen had falsified a line in an application for a loan, disguising her writing. However, all the information provided was true, while the bank failed to ask for correction at the time of the loan if it thought there was falsification. The court considered Hayes's opinion speculative. The \$1,000,000 debt sued on was found to be dischargeable.

COMMENTARY: Hayes did qualify his opinion, while the cogent bases for rejecting it were matters outside a document examiner's area of expertise. Still, any embarrassment stays with the named expert. One of several failures in the method of examination was that the bank only asked

that the handwriting of debtor and her husband be examined as possible writer of the disputed entry, not that of any bank employee. The report indicates Hayes worked hard on the case

921. *Luscombe v Missouri State Board of Nursing*, No. WD75049. (MO Ct. App. 2013)

Don Lock testified that nurse Luscombe had signed for four patients. In cross-examining him, she offered two affidavits by two of the patients that their signatures were authentic. The Board objected on basis of failure to produce the document in advance of the hearing as required. Even if they had been accepted into evidence, the other two signatures were still found by Lock to be forged.

COMMENTARY: A case of routine admissibility.

922. *Nichols v First Union National Bank and Lang*, 905 A.2d 268, 2006 D.C. App. LEXIS 486 (DC Cir. 2006)

Nichols refused to produce documents, etc., so he, his medical expert and handwriting expert, Katherine Koppenhaver, were barred from testifying. Defendant was granted summary judgment. All trial court rulings were affirmed.

COMMENTARY: The client's failure to abide by the rules cannot be credited against his experts who become victims of his negligence.

923. *People v Perry*, Indict.No. N10931/98. Memorandum. (Supreme Court Queens County, Criminal Term Part K, October 6, 2000)

"Defendant retained a handwriting expert, Ms. Jean Peetz, to examine the written statement, to compare it to a sample of defendant's handwriting and to render an opinion as to whether the defendant wrote the body of the confession."

People's motion to exclude Peetz granted since she relied on *post litem motam* exemplars. That they were written in open court was not relevant, since the People noted they were not with request of the opposing party.

COMMENTARY: I doubt that Peetz would have been the one to take the exemplars. This underlines an often repeated comment that expert witnesses should as best they can learn the laws and rules that govern their work, for their own protection is not for better service to the client. Just be careful not to appear to give legal advice while diplomatically calling attention to a consideration.

924. *People v Sargeant*, 685 N.E.2d 956, 292 Ill. App.3d 508. 226 Ill.Dec. 501 (IL App 1997)

Defendant successfully moved in limine to have proposed testimony of handwriting expert, James L. Hayes, ruled inadmissible at trial. The appeal decision explains the legal balance between excluding evidence and the right of the government to prove its case. The balance came down soundly in support of the trial court's ruling: "While an expert witness may testify in terms of 'could have' or 'might have' [citation omitted] his opinion should not be admitted if it is inconclusive or speculative [citations omitted]. In this case the handwriting expert's opinion was based on a photocopy of a writing sample and was inconclusive, tentative, and speculative. We do not know what his opinion would be if the original writing were to be examined."



COMMENTARY: I suspect Hayes could have given an opinion soundly based on facts. He is quoted as having written: "Based upon the examinations and comparisons conducted, I am of the opinion that the questioned signature cannot be identified as having been made by [Neenan]. Characteristics within the questioned signature, such as tremorous line quality and movement variations, indicate the signature may be an attempt at simulation. Should the original questioned exhibit become available, I will need to conduct a further analysis."

Did he check the genuine signatures to see if they had these traits? If they do not, each becomes a significant difference which prevents a finding of genuineness and might well support at least a probable opinion of falsity. This decision might well be the fruit of the prevalent myth today that loss or destruction of originals thwarts the expert, and, if so, a myth with which even handwriting experts are being infected to an epidemic degree.

925. *State v Davis a/k/a Erico Davias*, 139 N.H. 185 (NH 1994)

At page 192: "A handwriting expert from the Federal Bureau of Investigation testified that in his opinion the endorsements on the stolen checks were made by the defendant. The checks were deposited into the defendant's account...."

COMMENTARY: This serves as a reminder that, however conscientious we are in finding all of anything, we will miss something, and this something is the first and only New Hampshire case in this compilation. And then it is nothing special, just another case of routine admissibility.

926. *Suits v Idaho Board of Professional Discipline, Idaho State Board of Medicine*, 138 Idaho 397, 64 P.3d 323, 2003 Ida. LEXIS 21 (ID 2003)

Doctor's license revoked and he may not reapply for five years. Handwriting expert testified before Board that prescription was written for one person but given to another.

COMMENTARY: Though this does not involve court testimony, I include it in the appendix since there was no Idaho case in the text itself. Hopefully I will find one or more court cases for Idaho. At least with this and Item 925, every state is covered, however short the blanket.

927. *U.S. v Wells*, No. 12-1430. (8 Cir. 2013)

"Lynda Hartwick, a forensic document examiner, testified that she had examined known samples of Wells's signature and compared them with pseudoephedrine logs that purported to bear Wells's signature. Hartwick stated that it was 'highly probable' that the signatures were by the same author."

COMMENTARY: A case of routine admissibility.

928. *Gaddy v Calhoun*, No. COA95-937 (NC App. 1996)

Teresa Dean, certified by NADE, was properly admitted as a handwriting expert. She did not have to have training in detecting fraud for the court to find fraud based on her opinion that signatures to two deeds were not written by decedent.

COMMENTARY: A case of routine admissibility.

929. *Gomez v Ameripol Synpol Corporation*, C.A.No. 1:0??V-593. (US D.C., ED TX 2002)

A challenge under *Daubert* and *Kumho* to exclude Kay Micklitz as both a fact and expert witness failed. The decision systematically rebuts the most frequent arguments against private document examiners being admitted to testify in court. Some of these are not working for the government, not taking government training, having a prior occupation, and knowing handwriting analysis while the governmentally trained examiner does not. The conclusion sums up the true basis of the challenge:

“Plaintiff’s spurious attempt to disqualify Micklitz is based on nothing more than his expert, Dale Stobaugh’s, uncorroborated assertions that he is right and Micklitz is wrong.”

COMMENTARY: One dearly hopes Stobaugh had nothing to do with the “spurious attempt” to disqualify Micklitz since he had testified in deposition that their opposing opinions were only professional disagreements. To have done so would have been both ungentlemanly and having an ever so slight taint of duplicity.

930. *Estate of Edward Rollen Smith, Deceased*, No. 95-2020-P2(A). (Dallas County, TX, Probate Court No. 2, 1997)

After a protracted *in limine* challenge, the judge stated simply:

“Gentlemen:

“Linda L. Collins will be recognized as an expert. George W. Chaney will be recognized as an expert.”

COMMENTARY: Ms. Collins subsequently changed her name to Linda C. James. Ms. James consulted me on this case and so started me on the research that ultimately led to the text you are reading.

931. {U.S. v Cox, 3:92-CR-162-G. (E) (U.S. D.C., N.D., TX, 1994)}

After a hearing on whether defendant should be permitted to file an out of time appeal, Magistrate Judge Jane J. Boyle began: “Well, let me begin by saying that I think that the testimony of the document examiner was, was very credible.” Cox’s attorney had submitted a letter that she claimed she had written previously and that was evidence she never promised to file an appeal. The document examiner’s testimony contradicted this claim. Cox was granted leave to appeal.

COMMENTARY: The examiner was Linda James.

932. *Gold’s Gym Franchising LLC v Brewer, et al.*, Cause No. 05-11-00699-CV. (Ct. App., Dallas, TX, 2011)

Page 16 of the decision states: “In this case, the only evidence raised by Jerry Brewer that his signature is not genuine on the Legacy I Contract and Guaranty is his own self-serving affidavit. (1CR 23-24) Brewer’s expert provided no opinion on the 2005 Franchise Agreement and Guaranty. (1CR 31-34 for lack thereof) Gold’s Gym controverted Jerry Brewer’s affidavit with expert testimony by Linda James, a renowned document examiner, that the signature was genuine within a reasonable scientific certainty.”

The footnote 5 on page 17 says: “Ms. James is a nationally recognized expert as a forensic document and handwriting examiner. Ms. James’ opinions were not challenged or objected to by

Defendants. See Record for lack thereof.”

Brewer’s document examiner, Robert Foley, is first referred to on page 13 as “Appellees’ alleged expert.” He submitted an improper affidavit that should not have been considered and which may have been another victim of lack of instruction on format and contents. He provided no opinion on the disputed document. Defendants did not disclose their expert prior to filing motion for summary judgment, which the trial court granted improperly since there was proven by plaintiff to be a disputed fact subject to consideration by the fact finder.

At page 22 the substantive, versus procedural, objection to Foley’s affidavit is stated: “Appellant raised conclusory objections to the Affidavits of Jerry Brewer and Robert Foley. (1 CR 218- 232) The affidavit must provide the underlying facts to support the conclusion. *Rizkallah v. Conner*, 952 S.W.2d 580, 587 (Tex. App.--Houston [1st Dist.] 1997, no pet.) Conclusory affidavits are not credible or susceptible to being readily controverted. *Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996) (per curiam); *Maher v. PS Tex. Holdings, Ltd.*, 2010 Tex. App. LEXIS 4243, 11-12 (Tex. App.--Houston [1st Dist.] June 3, 2010, no pet.)”

COMMENTARY: If every conclusory report or affidavit offered by government trained document examiners were excluded in cases I have been involved in, at least half their offerings would be rejected. This is most evident in so-called reports from experts at Homeland Security and one of its predecessors, INS. At times I suspect courses in document examination for government trainees emphasize how magnificently smart they will all turn out as compared to all others, above actually learning to be at least moderately so. Thus by far they assert their government connections instead of setting forth their case-specific physical evidence, assuming they have enough to set forth.

933. *Bat World Sanctuary, et al., v Cummins*, Trial Court Cause No. 352-248169-10; Court of Appeals No. 02-12-0285-CV. (Trial: District Court, Tarrant County, TX, 2012.)

Linda James testified for Bat World Sanctuary, Inc., regarding the genuineness of defendant’s signature on a document.

COMMENTARY: A case of routine admissibility.

